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No. 80-1556

In the Supreme Court of the United States

OCTOBER TERM, 1981

KENNETH CORY, CONTROLLER OF THE STATE OF CALIFORNIA, and H. B. ALVORD, COUNTY TREASURER OF THE COUNTY OF LOS ANGELES,

Petitioners,

v.

MARK WHITE, ATTORNEY GENERAL OF THE STATE OF TEXAS, *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

Joint Appendix

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Certiorari Granted June 1, 1981

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Appendix

Filed July 14, 1978

In the United States District Court
for the Western District of Texas

Austin Division

Civil Action No.

A 78 CA 148

WILLIAM RICE LUMMIS, and
ANNETTE GANO LUMMIS,
Texas Temporary Co-Administrators of the Estate of Howard R. Hughes, Jr., Deceased,

Plaintiffs,

vs.

JOHN HILL, Attorney General of the State of Texas,
BOB BULLOCK, Comptroller of the State of Texas,
EVELLE J. YOUNGER, Attorney General of the State of California,

KENNETH CORY, Controller of the State of California and as Agent of the County of Los Angeles, California,
H. B. ALVORD, County Treasurer for the County of Los Angeles,

WILLIAM RICE LUMMIS, and
FIRST NATIONAL BANK OF NEVADA
Nevada Co-Special Administrators of the Estate of Howard R. Hughes, Jr., Deceased, and

RICHARD GANO
California Special Administrator of the Estate of Howard R. Hughes, Jr., Deceased,

Defendants.

COMPLAINT

Nature of the Action

1. This is an action in the nature of interpleader, including declaratory and injunctive relief.

Parties

2. Plaintiff Annette Gano Lummis is a citizen of the State of Texas ("Texas"), and Plaintiff William Rice Lummis is a citizen of the State of Nevada ("Nevada"); both are the Texas temporary co-administrators of the estate of Howard R. Hughes, Jr., deceased ("Texas Administrators") in proceedings pending in Probate Court No. 2 of Harris County, Texas.

3. The assets comprising the estates which are the subject of the several probate proceedings referred to herein are hereafter collectively referred to as "the Estate".

4. Defendant John Hill is the duly elected, qualified and acting Attorney General of Texas. Defendant Bob Bullock is the duly elected, qualified and acting Comptroller of Texas. Each official is a citizen of Texas; and each is charged by law with the duty of enforcing the inheritance tax laws of Texas.

5. Defendant Hill's business address is Supreme Court Building, Austin, Texas. His residence address is 2528 Tanglewood Trail, Austin, Texas.

6. Defendant Bullock's business address is 111 East Seventh Street, Austin, Texas. His residence address is 8301 Balcones Drive, Austin, Texas.

7. Defendant Evelle J. Younger is the duly elected, qualified and acting Attorney General of The State of California ("California"). Defendant Kenneth Cory is the duly elected, qualified and acting Controller of California. Each official is a citizen of California; and each is charged by law with the duty of enforcing the inheritance tax laws of California. Defendant Cory also acts in a representative capacity as Agent of the County of Los Angeles. Said county is a citizen of California. Defendant H. B. Alvord is a citizen of California; and is the duly qualified and acting County Treasurer for the County of Los Angeles.

8. Defendant Younger's business address is 555 Capitol Mall, Suite 550, Sacramento, California. His residence address is unknown to Plaintiffs, but is located in California.

9. Defendant Cory's business address is Division of Inheritance and Gift Tax, 1227 O Street, Sacramento, California. His residence address is unknown to Plaintiffs, but is located in California.

10. Defendant Alvord's business address is 500 West Temple Street, Room 137, Los Angeles, California. His residence address is unknown to Plaintiffs, but is located in California.

11. Defendants William Rice Lummis and the First National Bank of Nevada are the co-special administrators of the estate in Nevada ("Nevada Administrators"). Defendant First National Bank of Nevada is a national banking association located and having a principal place of business in Nevada; and is a citizen of Nevada pursuant to 28 U.S.C. § 1348. The business address of Defendant Lummis is Summa Corporation, P. O. Box 14000, Las Vegas, Nevada 89156. His residence address is Sands Hotel, Las Vegas, Nevada 89102. The address of Defendant First National Bank of Nevada is P. O. Box 160, 302 E. Carson Avenue, Las Vegas, Nevada 89101.

12. Defendant Richard Gano is a citizen of California; and is the special administrator of the estate in California ("California Administrator"). His address is 2214 E. Sycamore Street, Anaheim, California 92806.

Jurisdiction

13. Jurisdiction over the parties and subject matter is conferred upon this Court by:

(a) THE FEDERAL INTERPLEADER ACT, 28 U.S.C. § 1335, in that:

(i) the Defendants Hill and Bullock, citizens of Texas, are claiming that Decedent was a Texas domiciliary, adverse to the claim of Defendants Younger, Cory and Alvord, citizens of California, that Decedent was a California domiciliary.

(ii) Defendant Richard Gano, the California Administrator and a citizen of California, claims that Decedent was domiciled in Nevada at the time of death, adverse to the claims of Defendants Hill and Bullock, citizens of Texas, that Decedent was domiciled in Texas at the time of his death. Defendant Gano, as California Special Administrator, may be compelled to assert claims adverse to the Nevada Administrators, and Plaintiffs as well.

(iii) Defendants First National Bank of Nevada and William Rice Lummis, the Nevada Administrators, are claiming that Decedent was domiciled in Nevada at the time of his death, adverse to both the claim of Defendants Hill and Bullock, citizens of Texas, that Decedent was domiciled in Texas at the time of his death, and the claim of Defendants Younger, Cory and Alvord, citizens of California, that Decedent was domiciled in California at the time of his death.

(iv) Plaintiffs William Rice Lummis and Annette Gano Lummis, the Texas Administrators, are claiming that Decedent was domiciled in Nevada at the time of his death, adverse to both the claim of Defendants Hill and Bullock, citizens of Texas, that Decedent was domiciled in Texas at the time of his death and the claim of Defendants Younger, Cory and Alvord, citizens of California, that Decedent was domiciled in California at the time of his death.

(v) The amount in controversy exceeds the value of $500.00.

(b) 28 U.S.C. § 1331 in that this is an action arising under the Constitution and laws of the United States and the amount in controversy exceeds the value of $10,000.00 exclusive of interest and costs.

(c) 28 U.S.C. § 1343(3) in that this is an action to redress the deprivation of valuable property rights, now and in the future, under color of either Texas or California law, or the laws of both states, without according the Plaintiffs due proceess of law and equal protection of the law.

Venue

14. Venue is laid in this District by 28 U.S.C. § 1397.

Background

15. Howard R. Hughes, Jr. ("Decedent") died on April 5, 1976. On April 14, 1976, nine days after the death of Decedent, probate proceedings were initiated in the state courts of Texas, Nevada and California.

16. California and Texas each maintains, and has maintained at all relevant times herein, a system of death taxation whereby statutory liens on the right of succession are imposed on real and tangible personal property located within its borders; and on the intangible personality, wherever situated, of a person domiciled within that particular state. The responsible authorities in each State, including Defendants Hill and Bullock in Texas and Defendants Younger, Cory and Alvord in California, are claiming that Decedent was domiciled therein at the time of his death and have taken steps to impose a tax on all the assets of the Estate within their taxing jurisdiction, including intangibles, which embrace almost the entire value of the Estate. Additionally, Defendants Younger, Cory and Alvord are claiming that a part of the Estate is subject to California death taxation on the ground that Decedent was domiciled without the United States at the time of his death. Plaintiffs deny these conflicting claims of domicile and assert that Decedent was a domiciliary of Nevada at the time of his death.

17. The law of both Texas and California recognizes that for death tax purposes a decedent has only one domicile at time of death; and, if domicile within the taxing jurisdiction is the asserted ground for taxation, that only the domiciliary state has a lawful right to tax the Decedent's intangibles.

18. On June 10, 1976, Texas filed an appearance in the Texas probate proceedings, contending, *inter alia,* that Decedent was a

Texas domiciliary at the time of his death and asserting its statutory death tax lien against all assets subject to Texas jurisdiction, including intangibles wherever located. On April 10, 1978, a judgment was entered in the Texas probate court that Decedent was a Texas domiciliary at the time of his death. That judgment is being appealed by the Texas administrators in the Texas appellate courts and therefore is not yet final and conclusive. California is not a party to and therefore takes the position that it will not be bound by any judgment entered in the Texas proceedings.

19. California death tax proceedings began with the appointment by the Superior Court, Los Angeles County, of an Inheritance Tax Referee to inventory and appraise the Estate subject to California jurisdiction. On August 24, 1977, the California Administrator submitted the California Inheritance Tax Declaration to the Referee. The California Administrator's Declaration asserted that Decedent was a Nevada domiciliary and reported only tangible personal and real property located in California. The Inheritance Tax Referee has advised that he intends to file a report stating that there is now due a California death tax on the entire Estate, less the real and tangible personal property located outside of California, on the basis that Decedent was domiciled in either California or outside of the United States at the time of death. Notice of the filing of the Report will be sent as required by law to all known persons potentially liable for the tax. Objections to the Report based, *inter alia,* on the claim of Nevada domicile, will be filed by the California Administrator, who will continue to maintain that Decedent was a Nevada domiciliary at the time of his death. The question of Decedent's domicile is therefore an issue in the California proceedings. Texas is not a party to and therefore takes the position that it will not be bound by any judgment entered in the California proceedings.

20. Legal action involving the Estate is also pending in the following jurisdictions:

(a) Nevada. Application to probate the so-called "Mormon Will" was filed in Nevada state court on April 30, 1976 by Noah Dietrich, as executor, and a contest to that application was filed by Annette Gano Lummis in her individual capacity on May 6, 1976. On June 23, 1976 Texas filed a Motion to Dismiss for Want of Jurisdiction and Contest and Opposition to Probate in the will contest proceedings in Nevada, contending that Decedent was a Texas domiciliary at the time of his death and asking the Nevada court to stay its proceedings pending the outcome of the Texas proceedings. On August 27, 1976 the Nevada court denied Texas' Motion and ordered that the validity of the so-called "Mormon Will" be tried before a determination on the issue of domicile. The ensuing "Mormon Will" trial lasted some seven months. A judgment decreeing the will to be invalid was entered on June 23, 1978. The issue of domicile is still pending in the Nevada administration. Although Texas appeared in the Nevada proceedings, it now disclaims that such appearance was a general appearance and asserts that it therefore will not be bound by the Nevada domicile proceeding. California has made no appearance in the Nevada proceeding and therefore takes the position that it will not be bound by a determination as to domicile in that proceeding.

(b) Delaware. On May 4, 1976, Summa Corporation, a Delaware corporation wholly owned by Decedent, instituted an interpleader action in the Chancery Court of New Castle County, Delaware, initially seeking a determination as to the ownership of its outstanding shares. Later the petition was amended so that the relief sought was a direction from the court as to the proper domiciliary administration to whom the shares should be remitted on termination of administration. The Delaware Chancery Court has entered an order requiring Summa until further order to recognize William Rice Lummis, as ancillary administrator of the Estate in Delaware, as the sole shareholder of Summa. California

did not appear therein; it therefore takes the position that it will not be bound by any judgment entered in the Delaware proceeding. Texas appeared in the Delaware proceeding, but is seeking a dismissal of the action to it and disclaims that its appearance was a general appearance. Accordingly, Texas contends that it will not be bound by any judgment entered therein.

21. On November 11, 1977, California sought leave of the United States Supreme Court to file with that Court a Complaint against Texas, seeking, *inter alia,* that the Court declare that Decedent was not a Texas domiciliary at the time of his death. On June 22, 1978 the Court denied, *per curiam,* the California Motion. A copy of the order of the Court, including the three opinions by the four Justices concurring therein, is attached to this Complaint as "Exhibit A".

22. In view of (i) the continuing failure or unwillingness of both Texas and California to submit to the jurisdiction of each other's courts, and to the jurisdiction of courts in other states, and (ii) the refusal of the United States Supreme Court to grant leave to California to file a complaint with the Court against Texas, Plaintiffs in the case at bar allege a federal district court with interpleader jurisdiction, such as this Court, provides the only readily available forum wherein an adjudication of the domicile of Decedent binding upon all indispensable parties can be made, with respect to all of the assets of the Estate.

Interpleader

23. As a result of the facts hereinabove alleged Plaintiffs are faced with the assertion of conflicting claims of domicile and death taxes and a consequent substantial risk of loss that the courts of Texas and California will each separately determine Decedent to have been a domiciliary of different jurisdictions, contrary to the law of each state which recognizes that a decedent can be domiciled in only one jurisdiction at the time of death and the claim of Plaintiffs that Decedent was a Nevada domiciliary at the time of his death.

24. Plaintiffs allege that, in this event, the Estate would be insufficient to discharge the aggregate tax assessments claimed by Texas (roughly 16%), California (roughly 24%) and the United States (roughly 77% minus a 16% state tax credit, or 61%), assessments which would result in a total tax rate of 101% of the Estate.

25. Because California law does not permit certain deductions from the gross estate which are allowable for Federal estate tax purposes, California's real rate of taxation significantly exceeds its nominal 24% rate. Thus, should California and Texas each determine that Decedent was a domiciliary of its respective state, the Estate would be subject to an effective death tax rate well in excess of 101% of the net federal taxable estate.

26. Plaintiffs have no plain, speedy or efficient remedy in the state courts of either Texas or California.

27. On the other hand, the law has now developed so that Federal Interpleader in a proper United States District Court is now available, offers an effective remedy to prevent multiple death taxes on intangibles where the multiple taxes are based on a single domicile, as here, and hence only one state may legally levy and collect the tax. In equity and good conscience the remedy should now be used to prevent illegal multiple state taxation that is arbitrary, confiscatory and violates the due process clause of the Fourteenth Amendment.

28. Plaintiffs, as administrators, claim no beneficial interest in the Estate.

29. Property and funds being administered by Plaintiffs and the Defendant Administrators are held by them in their fiduciary capacities and subject to the jurisdiction and control of the probate courts referred to above. Accordingly, they cannot deposit said property and funds with this Court. Plaintiffs will abide the judgment of this Court respecting the conflicting claims which are the subject hereof, and are prepared to give such bond to the Clerk of

this Court as the Court may deem proper. Plaintiffs further allege, in this regard, that because their conduct, and that of the Defendant Administrators, with respect to the property and funds within their control, is subject to fiduciary standards and judicial control by the various probate courts, a bond in a nominal amount will protect the legitimate interests of the remaining Defendants.

COUNT I.

30. Plaintiffs reallege the allegations contained in Paragraphs 1-29 above.

31. Plaintiffs allege that the acts of Defendants Hill and Bullock, purportedly on behalf of Texas, as hereinabove alleged, and the acts of Defendants Younger and Cory, purportedly on behalf of California and the acts of Defendants Cory and Alvord, purportedly on behalf of the County of Los Angeles, as alleged hereinabove, are in fact and in law wholly without any valid legal authority for the reasons that Decedent was a Nevada domiciliary at the time of his death, could not therefore have been a domiciliary of any other jurisdiction, and under the inheritance laws of each of those states, the imposition of death taxes could not be lawfully made.

32. Plaintiffs allege that Defendants Hill and Bullock and Defendants Younger, Cory and Alvord are tort-feasors in that they have been and are now acting without legal warrant.

COUNT II.

33. Plaintiffs reallege the allegations contained in Paragraphs 1-29 above.

34. Plaintiffs allege that even if Decedent was not domiciled in Nevada at the time of his death, nevertheless, the acts of Defendant Hill and Defendant Bullock, and each of them, purportedly on behalf of the State of Texas, as hereinabove alleged, constitute a denial of due process of law for the reason that while the law of each of the States of Texas and California recognizes

that a decedent has but one domicile for purposes of death taxes, the proceedings in neither State can protect the Estate from having to pay the same obligation twice, if it must be paid at all.

COUNT III.

35. Plaintiffs reallege the allegations contained in Paragraphs 1-29 above.

36. Plaintiffs allege that even if Decedent was not domiciled in Nevada at the time of his death, nevertheless, the acts of Defendant Younger and Defendant Cory, and each of them, purportedly on behalf of the State of California, as hereinabove alleged, and Defendant Cory and Defendant Alvord, and each of them, purportedly on behalf of the County of Los Angeles, as hereinabove alleged, constitute a denial of due process of law for the reason that while the law of each of the States of Texas and California recognizes that a decedent has but one domicile for purposes of death taxes, the proceedings in neither State can protect the Estate from having to pay the same obligation twice, if it must be paid at all.

COUNT IV.

37. Plaintiffs reallege the allegations contained in Paragraphs 1-29 above.

38. Plaintiffs allege that only a federal district court with interpleader jurisdiction, such as this Court, can provide a plain, speedy and efficient forum securing the presence of parties indispensable to this action, with respect to all of the assets of the Estate, the absence of which constitutes a denial of due process of law.

39. Accordingly, the Defendants Hill, Bullock, Younger, Cory and Alvord, and each of them, should be enjoined from the depriving of Plaintiffs, under color of state law, of valuable property rights without according the Plaintiffs both due process of law, by

proceeding in a forum which cannot afford jurisdiction over all indispensable parties, and equal protection of the law.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully demand that this Court:

1. Require that Defendants be cited pursuant to 28 U.S.C. § 2361, in order to interplead their claims against the Estate in this action as against the claim of the Plaintiffs that Decedent was domiciled in Nevada, and therefore not in any other jurisdiction, at the time of his death.

2. Adjudge and declare that Decedent was domiciled in Nevada, and therefore not in any other jurisdiction, at the time of his death.

3. Adjudge and declare that Plaintiffs are not liable to either Texas or California for death taxes levied on intangibles of Plaintiff's Estate and that Defendants Hill, Bullock, Younger, Cory and Alvord are acting without any legal warrant and will continue so to act unless restrained by this court.

4. Restrain and enjoin the Defendants Hill, Bullock, Younger, Cory and Alvord and their agents from instituting, prosecuting, or continuing any proceeding in any State or United States Court affecting the properties, instrument or obligation involved in this action until further order of this court.

5. Grant Plaintiffs all other and further relief, including its costs and attorneys' fees, to which entitlement is shown.

Respectfully submitted,

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and Annette Gano Lummis

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(Exhibits Omitted in Printing)

Filed August 3, 1978

In the United States District Court
for the Western District of Texas
Austin Division

[Title Omitted in Printing]

MOTION TO DISMISS

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME John L. Hill, Attorney General of Texas, and Bob Bullock, Comptroller of Texas, Defendants in the above numbered and entitled cause, and file this their Motion to Dismiss. In support thereof, Defendants would respectfully show this honorable Court the following:

I.

The federal courts of the United States, specifically including this Court, lack jurisdiction over the parties and the subject matter of this action.

II.

The Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

III.

This action brought against the Attorney General and the Comptroller of the State of Texas is in fact and substance a suit against the State of Texas and is forbidden by the Eleventh Amendment to the United States Constitution. A time-tested unanimous United States Supreme Court decision so holds. *Worcester County Trust Co. v. Riley*, 302 U.S. 292 (1937).

IV.

This action brought against the Attorney General and the Comptroller of the State of Texas is in fact and substance a suit against the State of Texas. The State of Texas as a sovereign State of the United States is immune from suit by the Plaintiffs and has not given its consent to be sued.

V.

The judicial power of the federal courts under Article III, Section 2, of the United States Constitution does not extend to this action. No question is presented which arises under the Constitution or laws of the United States. In addition, this suit is not between citizens of different States, but is in fact and substance a suit between the Plaintiffs and the States of Texas and California, neither of which is a citizen of itself.

VI.

Plaintiffs' Complaint presents no question arising under the Constitution or laws of the United States.

VII.

Defendants' action on behalf of the State of Texas in attempting to collect a domicile-based inheritance tax with respect to the estate of Howard R. Hughes, Jr., pursuant to the provisions of constitutional state inheritance tax statutes, is lawful and constitutional in every respect.

VIII.

This suit is not between citizens of different States.

IX.

Plaintiffs' real complaint is that both the State of Texas and the State of California can levy a tax with respect to the estate of Howard R. Hughes, Jr. Although such an occurrence is quite un-

likely, no constitutional question is presented thereby because the United States Constitution permits both States to impose an inheritance tax with respect to an estate.

X.

This Court does not have jurisdiction over the parties or the subject matter under 28 U.S.C. §1335 for the following reasons, among others:

(a) There are not "two or more adverse claimants" in this action as required by 28 U.S.C. §1335(a)(1). The only claimants in this action within the scope of §1335 are the States of Texas and California and their respective claims are not adverse to each other;

(b) There is not "diverse citizenship" between claimants as required by 28 U.S.C. §1335(a)(1) and as defined in 28 U.S.C. §1332. The only claimants in this action within the scope of §1335 are the States of Texas and California and these States are not citizens of themselves; and

(c) There are not two or more claimants to the same money or property as required by 28 U.S.C. §1335(a)(1). Moreover, the Plaintiffs have not deposited the money or property which they consider to be in controversy into the registry of the Court, nor have they given sufficient bond payable to the Clerk of the Court to insure their ability to comply with the judgment of the Court.

XI.

If 28 U.S.C. §1335 is applicable to the present case, then said statute violates the Tenth Amendment to the United States Constitution in that the Congress of the United States was not given the power in Article I, Section 8, of the United States Constitution to legislate with respect to the probate of decedents' estates or the collection of State inheritance taxes.

XII.

This suit is prohibited by the Tax Injunction Act, 28 U.S.C. §1341, because the Complaint in part requests a United States District Court to enjoin the assessment, levy and collection of a tax under State law where a plain, speedy and efficient remedy may be had in State courts. The courts of California are quite unlikely to sanction the tax claim of the State of California, and therefore the California state court system provides the estate with an adequate means of eliminating the possibility of double taxation.

XIII.

Plaintiffs have failed to exhaust available state judicial remedies and therefore at this time cannot resort to this Court for relief. Both the State of California and the State of Texas provide recourse to their respective judicial systems for a challenge to inheritance tax liability asserted by each State. The courts of each State must be permitted to resolve issues of local tax law without interference from the federal judiciary. If the denial of any federal right is alleged, the final judgments of the state courts will be reviewable by the United States Supreme Court.

XIV.

On April 10, 1978, the Honorable Pat Gregory, Judge of Probate Court No. 2 of Harris County, Texas, issued a Final Judgment Determining Domicile And Denying Probate Of Alleged March 19, 1968 Will in Cause No. 139,362 styled *In re: Estate of Howard Robard Hughes, Jr., Deceased.* A certified copy of said judgment is attached hereto as Exhibit "A" and is incorporated herein for all purposes as if the same were set out verbatim herein. That judgment, based upon a jury verdict rendered on February 15, 1978, is to the effect, in pertinent part, that the State of Texas was the domicile of Howard R. Hughes, Jr., for all purposes at the time of his death on April 5, 1976. The judgment further recites

the numerous persons and entities who made an appearance in that cause and were parties to the proceedings. Only William Rice Lummis and Annette Gano Lummis as Co-Temporary Administrators of decedent's estate (and possibly the Howard Hughes Medical Institute) perfected an appeal from said judgment. As to all other parties who subjected themselves to the jurisdiction of said State court, specifically including all known heirs of Howard Robard Hughes, Jr., the judgment with respect to Texas domicile became final prior to the institution of the present action in this court due to their failure to appeal. Therefore, this judgment must be given full faith and credit as to such non-appealing parties by this Court pursuant to 28 U.S.C. §1738 and the doctrine of res judicata given full force and effect.

XV.

Pursuant to TEX. TAX.—GEN. ANN. art. 14.18 (1969), all the heirs of Howard Robard Hughes, Jr., are personally liable for the Texas inheritance tax. These heirs as non-appealing parties to the foregoing judgment rendered in Probate Court No. 2 of Harris County, Texas, are forever bound to the determination entered therein that Howard Robard Hughes, Jr., was a domiciliary of the State of Texas at the time of his death for the purpose of determining the extent of said Decedent's Estate subject to inheritance tax pursuant to Chapter 14, Title 122A, Texas Taxation—General. (Exhibit A at page 1). In addition, every sister State court pursuant to the Full Faith and Credit Clause of the United States Constitution (Article 4, Section 1) and every federal court pursuant to 28 U.S.C. § 1738 is required to give full faith and credit to that judgment against said heirs. Consequently, the State of Texas can always collect its inheritance tax with respect to the estate of Howard Robard Hughes, Jr., on the basis that Mr. Hughes was a domiciliary of Texas by virtue of its enforceable judgment against the heirs. Therefore, any question presented here

as to whether the State of Texas can lawfully collect its inheritance tax on the basis of Texas domicile is moot. In addition, as to the State of Texas, the Complaint herein fails to state a claim upon which relief can be granted and requests an advisory opinion of this Court.

XVI.

Assuming *arguendo* that this Court has jurisdiction of this action, and that a federal question is presented, the Court should abstain from exercising its jurisdiction to avoid needless, egregious conflict with the State of Texas in a probate and tax matter by permitting domicile litigation to proceed to conclusion in the California state courts. Should the State of California not prevail in its own state courts, a result which is highly likely, then the present action would evaporate. When the State of Texas has in good faith litigated the matter to conclusion in its own state courts, this federal court in the interest of comity should require no less of California when that will very likely be dispositive of these proceedings. Such a course of action is particularly mandated in this case where California has done nothing in its own state courts to assess a tax and where its only judicial action has been to request permission of the United States Supreme Court to file a Complaint against the State of Texas, seeking only that the Court declare the decedent not to be a domiciliary of the State of Texas at the time of his death. Significantly, that sole judicial action was taken pursuant to two agreements between the State of California and the Plaintiffs herein, attached hereto as Exhibits "B" and "C", whereby California would recover 18% of the estate of decedent even if the Court declared him to be a domiciliary of the State of Nevada, and whereby California would obtain 2% of the estate even if that Court declared decedent to be a domiciliary of the State of Texas at the time of his death.

XVII.

Defendants respectfully reserve the right to answer on the merits should this honorable Court rule adversely to Defendants on their Motion to Dismiss.

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully pray that this suit be dismissed and that all costs be taxed against the Plaintiffs.

Respectfully submitted,

JOHN L. HILL
Attorney General of Texas

.....

DAVID M. KENDALL
First Assistant Attorney General

DAVID DEADERICK
Assistant Attorney General

BERT W. PLUYMEN
Assistant Attorney General

Attorneys for Defendants

P. O. Box 12548, Capitol Station
Austin, Texas 78711

(Exhibits and Certificate of Service Omitted in Printing)

Filed August 28, 1978

In the United States District Court
for the Western District of Texas

Austin Division

[Title Omitted in Printing]

DEFENDANTS CORY'S AND ALVORD'S MOTION TO ADD DEFENDANTS

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Defendants Cory and Alvord and, pursuant to Rules 19 and 20 of the Federal Rules of Civil Procedure, file this motion to compel the Plaintiffs to amend their complaint to add certain persons as Defendants:

I.

The above-named Defendants respectfully move this court for an order (1) making all of the heirs at law of Howard Hughes parties to this action as defendants; (2) directing that process be issued and served upon such heirs; (3) and requiring Plaintiffs to serve and file an amended complaint naming such heirs as Defendants.

II.

A Memorandum of Points and Authorities in support of this motion is filed herewith.

WHEREFORE, PREMISES CONSIDERED, the Defendants Cory and Alvord respectfully pray that the heirs at law of Howard Hughes be made defendants in this action.

Respectfully submitted,

JEROME B. FALK, JR.
STEVEN L. MAYER
HOWARD, PRIM, RICE, NEMEROVSKI, CANADY & POLLAK
A Professional Corporation
650 California Street
Suite 2900
San Francisco, California 94108

DONALD S. THOMAS
CLARK, THOMAS, WINTERS & SHAPIRO
1200 Capital National Bank Bldg.
Post Office Box 1148
Austin, Texas 78767

By: DONALD S. THOMAS
Attorneys for Defendants
Cory and Alvord

Of Counsel:

MYRON SIEDORF
Chief Inheritance Tax Attorney
JAMES R. BIRNBERG
Assistant Inheritance Tax Attorney
Division of Inheritance & Gift Tax
107 South Broadway
Los Angeles, CA 90012

[Certificate of Service Omitted in Printing]

Filed August 28, 1978

In the United States District Court
for the
Western District of Texas
Austin Division

[Title Omitted in Printing]

DEFENDANTS CORY'S AND ALVORD'S MOTION FOR CHANGE OF VENUE

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Defendants Cory and Alvord, pursuant to 28 U.S.C. § 1404(a), and file this motion for a change of venue from the Western District of Texas:

I.

The above-named Defendants respectfully move this Court to transfer this action to the United States District Court for the District of Colorado.

II.

In the alternative, the above-named Defendants respectfully move this Court to transfer this action to the Central District of California.

III.

A Memorandum of Points and Authorities in support of this motion is filed herewith.

WHEREFORE, PREMISES CONSIDERED, the Defendants Cory and Alvord respectfully pray that this action be transferred to The District of Colorado or, in the alternative, to the Central District of California.

Respectfully submitted,

JEROME B. FALK, JR.
STEVEN L. MAYER
HOWARD, PRIM, RICE,
NEMEROVSKI, CANADY &
POLLAK
A Professional Corporation
650 California Street
Suite 2900
San Francisco, California 94108

DONALD S. THOMAS
CLARK, THOMAS, WINTERS &
SHAPIRO
1200 Capital National Bank Bldg.
Post Office Box 1148
Austin, Texas 78767

By: DONALD S. THOMAS
Attorneys for Defendants
Cory and Alvord

Of Counsel:

MYRON SIEDORF
Chief Inheritance Tax Attorney
JAMES R. BIRNBERG
Assistant Inheritance Tax Attorney
Division of Inheritance & Gift Tax
107 South Broadway
Los Angeles, CA 90012

[Certificate of Service Omitted in Printing]

Filed August 28, 1978

In the United States District Court
for the
Western District of Texas
Austin Division

[Title Omitted in Printing]

AFFIDAVIT OF STEVEN L. MAYER IN SUPPORT OF MOTION FOR CHANGE OF VENUE

I, Steven L. Mayer, being first duly sworn, depose and say:

1. I am a member of the State Bar of California and the United States District Court for the Northern District of California, and am one of the attorneys for defendants Cory and Alvord in the above entitled action. If called upon to do so, I could competently testify of my own personal knowledge to the facts set forth herein, except as otherwise indicated.

* * *

11. The known heirs to the Hughes estate have entered into a series of settlement agreements, which purport to distribute the estate to the heirs in specified percentages, irrespective of the state ultimately found to be Mr. Hughes' domicile. Attached hereto as Exhibit F-1 is a true and correct copy of the original Settlement Agreement reached between the heirs in 1976; and Exhibit F-2 attached hereto is a true and correct copy of the Supplemental Agreement signed in 1977. Attached to the agreements are true copies of the notarized signatures of the heirs which, assuming the heirs signed the agreement in their states of residence, indicates their geographical distribution. It can be seen that, as of the date of the recent Supplemental Agreement, the heirs resided in Ohio, Massachusetts, Colorado, Texas and Florida. A list of the heirs which shows the date and place they signed the Supplemental Agreement is attached hereto as Exhibit G. In addition, I have been informed by members of the firm of Andrews, Kurth, Camp-

bell and Jones, counsel for plaintiffs herein, that at least one heir presently resides in the District of Colorado.[2]

* * *

[jurat omitted in printing]

EXHIBIT F

Exhibit F to the Affidavit of Steven L. Mayer
in Support of Motion for Change of Venue, filed August 28, 1978

SETTLEMENT AGREEMENT

THIS AGREEMENT ("Settlement Agreement") is entered into on the dates set forth below, among the following parties:

I.

BARBARA CAMERON, ELSPETH DePOULD and AGNES ROBERTS.

II.

WILLIAM KENT GANO, RICHARD C. GANO, JR., DORIS GANO WALLACE, ANNETTE GANO GRAGG and HOWARD HUGHES GANO.

III.

ANNETTE GANO LUMMIS, ALLENE LUMMIS RUSSELL, ANNETTE GANO LUMMIS NEFF, WILLIAM RICE LUMMIS and FREDERICK RICE LUMMIS, JR.

IV.

JANET HOUSTOUN DAVIS, SARA HOUSTOUN LINDSEY and JAMES PATRICK HOUSTOUN, JR.

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2. [Petitioners' Note: Although the Mayer Affidavit identifies the original and amended settlement agreements as Exhibits F-1 and F-2, respectively, the actual documents attached to the Exhibit were both stamped Exhibit F. They are identified in this appendix as they were in the District Court.]

V.

JOHN McINTOSH HOUSTOUN, MARGOT FLEMING HOUSTOUN, JAMES WILKIN HOUSTOUN and RICHARD ALEXANDER HOUSTOUN (by his Guardian, MARIAN FLEMING HOUSTOUN COMSTOCK).

RECITALS

A. The parties are the heirs-at-law, known to exist as of the Effective Date, to the estate of Howard Robard Hughes, Jr. (the "Decedent"), who died on April 5, 1976, and are entering into this Settlement Agreement as such.

* * *

D. Although Wills purportedly executed by Decedent have been produced, the parties recognize that Decedent, in fact, may have died intestate.

E. If Decedent died intestate, the Estate will be divided and distributed in accordance with the laws of the jurisdiction in which, at the time of his death, he was legally domiciled or, as to certain classes of Estate property, the laws of the jurisdictions in which the property of the Estate is located. At the present time there is uncertainty as to which jurisdictions ultimately will be determined to be the jurisdictions controlling distribution. The parties have been advised that among the jurisdictions of possible domicile are Mexico, the Bahamas, England, Nicaragua, Canada, Nevada, Texas and California and that the laws of succession and descent and distribution of these particular jurisdictions conflict with one another.

* * *

IN WITNESS WHEREOF, this agreement has been executed effective on the dates set forth below.

* * *

THE STATE OF COLORADO
COUNTY OF DENVER — ss.

The foregoing instrument was acknowledged before me this 7th day of July, 1976, by ELSPETH DEPOULD.

Witness my hand and official seal.

Notary Public in and for
Denver County, Colorado

My Commission Expires
December 17, 1979

THE STATE OF COLORADO
COUNTY OF DENVER — ss.

The foregoing instrument was acknowledged before me this 10th day of July, 1976, by JOHN MCINTOSH HOUSTOUN.

Witness my hand and official seal.

Notary Public in and for
Denver County, Colorado

My Commission Expires
December 14, 1979

THE STATE OF COLORADO
COUNTY OF DENVER — ss.

The foregoing instrument was acknowledged before me this 10th day of July, 1976, by MARGOT FLEMING HOUSTOUN.

Witness my hand and official seal.

Notary Public in and for
Denver County, Colorado

My Commission Expires
December 17, 1979

THE STATE OF TEXAS
COUNTY OF HARRIS — ss.

BEFORE ME, the undersigned authority, on this day personally appeared ALLENE LUMMIS RUSSELL, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 12th day of July, 1976.

DOUGLAS E. CLARKE
Notary Public in and for
Harris County, Texas

Douglas E. Clarke
My Commission Expires
June 1, 1977

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES — ss.

On July 16, 1976, before me, the undersigned, a notary public in and for said State personally appeared RICHARD C. GANO, JR., known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

FLORENCE T. DORAN
Notary Public

[SEAL]

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES — ss.

On July 21, 1976, before me, the undersigned, a notary public in and for said State, personally appeared BARBARA CAMERON, known to me to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same.

WITNESS my hand and official seal.

MAUREEN E. FITCH
Notary Public

[SEAL]

Exhibit F to the Affidavit of Steven L. Mayer
in Support of Motion for Change of Venue, filed August 28, 1978

SUPPLEMENTAL AGREEMENT
TO SETTLEMENT AND ANCILLARY AGREEMENTS
OF JULY 1976
BETWEEN THE THEN KNOWN HEIRS-AT-LAW OF
HOWARD ROBARD HUGHES, JR.

THIS AGREEMENT ("Supplemental Agreement") is entered into on the dates set forth below, among the following parties:

I.

BARBARA CAMERON, ELSPETH DePOULD and AGNES ROBERTS.

II.

WILLIAM KENT GANO, RICHARD C. GANO, JR., DORIS GANO WALLACE, ANNETTE GANO GRAGG and HOWARD HUGHES GANO.

III.

ANNETTE GANO LUMMIS, ALLENE LUMMIS RUSSELL, ANNETTE GANO LUMMIS NEFF, WILLIAM RICE LUMMIS and FREDERICK RICE LUMMIS, JR.

IV.

JANET HOUSTOUN DAVIS, SARA HOUSTOUN LINDSEY and SOUTHERN NATIONAL BANK OF HOUSTON, Independent Executor of the ESTATE OF JAMES PATRICK HOUSTOUN, JR., DECEASED.

V.

JOHN McINTOSH HOUSTOUN, MARGOT FLEMING HOUSTOUN, JAMES WILKIN HOUSTOUN and RICHARD ALEXANDER HOUSTOUN (by his Guardian, MARIAN FLEMING HOUSTOUN COMSTOCK).

VI.

AVIS HUGHES McINTYRE and RUSH HUGHES.

RECITALS

A. In July, 1976, the parties named under captions I through V above entered into a Settlement Agreement effective as of July 1, 1976, and an Ancillary Agreement effective as of July 1, 1976, in order, among other things, to settle their respective claims, with respect to one another, as heirs-at-law in and to the Estate of Howard Robard Hughes, Jr. ("Decedent"), who died April 5, 1976. The Settlement Agreement and the Ancillary Agreement are by this reference incorporated herein and made a part hereof. As used in this Supplemental Agreement, the term "Estate" shall mean the estate of Decedent as it is defined in the Settlement Agreement.

* * *

Accordingly, in view of the foregoing and the respective covenants contained herein, and for other good and valuable consideration, receipt and sufficiency of which hereby is acknowledged, it is mutually agreed as follows:

* * *

4. Each party hereto hereby represents to each other party hereto that he or she knows of no facts which would entitle any person not a party hereto to a legitimate claim to a share of the Estate if Howard Robard Hughes, Jr., is ultimately found to have died intestate.

* * *

IN WITNESS WHEREOF, this Supplement Agreement has been executed by the parties hereto, on the dates set forth below.

* * *

THE STATE OF OHIO
COUNTY OF CUYAHOGA—ss

BEFORE ME, the undersigned authority, on this day personally appeared BARBARA CAMERON, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 11th day of June, 1977.

P. M. DAWSON
Notary Public in and for

.....

[SEAL]

THE STATE OF OHIO
COUNTY OF CUYAHOGA—ss

BEFORE ME, the undersigned authority, on this day personally appeared ELSPETH DePOULD, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 11th day of June, 1977.

P. M. DAWSON
Notary Public in and for

.....

[SEAL]

THE STATE OF MASS
COUNTY OF NORFOLK—SS.

BEFORE ME, the undersigned authority, on this day personally appeared ALLENE LUMMIS RUSSELL, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 16th day of June, 1977.

MARGARET L. GRIFFIN
Notary Public in and for

[SEAL]

THE STATE OF TEXAS
COUNTY OF HARRIS—SS.

BEFORE ME, the undersigned authority, on this day personally appeared RICHARD C. GANO, JR., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 8th day of June, 1977.

DOUGLAS E. CLARKE
Notary Public in and for
Harris County, Texas

THE STATE OF COLORADO
CITY & COUNTY OF DENVER—SS.

BEFORE ME, the undersigned authority, on this day personally appeared JOHN McINTOSH HOUSTOUN, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 10th day of June, 1977.

PATRICIA H. JONES
Notary Public in and for
City & County of Denver, Colorado
My Commission Expires Feb. 8, 1981

THE STATE OF TEXAS—SS.
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared MARGOT FLEMING HOUSTOUN, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 9th day of June, 1977.

DOUGLAS E. CLARKE
Notary Public in and for
Harris County, Texas

Testimony of O. Clayton Lilienstern at the Hearing on Defendant Cory & Alvord's Motion for Change of Venue & Motion to Add Defendants, November 21, 1978

* * *

[39] CLAY LILIENSTERN having been called as a witness, and having been by the Court first duly sworn, testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. GEORGE:

Q Mr. Lilienstern, state your name and address for the record.

A My name is O. Clayton Lilienstern, my business address is 2500 Exxon Building, Houston, Texas.

[40] Q You are a lawyer, is that right?

A Yes, I am a lawyer with Andrews, Kurth, Campbell & Jones.

Q Have you been involved in the Hughes estate matters in various courts?

A Yes, I have, since approximately April 20th of 1976. some two weeks following Mr. Hughes' death.

Q What courts does that involve?

A That has involved Probate Court No. 2 of Harris County, Texas, the District Court for the Eighth Judicial District of the State of Nevada, the Superior Court in Los Angeles, in which the Howard Hughes California administration is pending, also a court in the State of Delaware.

Q First of all, would you tell the Court whether or not it has been determined that Mr. Hughes died intestate?

A It has not. No heirship determination has been made, by any court, in which a Howard Hughes estate administration is pending.

Q Has anybody claimed that there is a will?

A Yes. There have been several types of claims concerning wills. Two wills have been determined not to be the last will and testament of Howard Hughes, one is the so-called

Mormon will, which was tried some eight months in Nevada; it was also tried to Probate Court [41] No. 2 in Houston; another was the so-called Grover Walker will, which was disposed of in a hearing before a probate Judge in Nevada. There are also some 35 other wills which have been accepted for filing by the County Clerk of Clark County, Nevada.

Q Okay. Is there a lost will claim?

A There is. The Howard Hughes Medical Institute has filed a petition to probate a lost or destroyed will in the State of Nevada. Nevada also entered an appearance in the Texas probate proceeding. Summary judgment motions are pending in both jurisdictions as to the Howard Hughes Medical Institute claim that there is a lost or destroyed will naming it as a beneficiary.

Q The sole beneficiary, is that right?

A I am not sure they claim sole beneficiary, but they certainly claim to be the principal beneficiary.

Q Okay. Now, the document known as the Mormon will, has that been conclusively litigated to be invalid?

A It has been litigated in the states of Nevada and Texas; it is still pending in California; no hearing has been held on it in California.

Q So, if that will is tried in California, and the jury finds it is valid, then we don't have any heirs, we have a testate succession, is that right?

A Well, presumably that would be the effect. My own [42] belief is it is very unlikely that that will, in the view of the prior determinations, will ever go to trial in California.

Q Now, have you prepared an exhibit for the Court showing the name or the list of people who have claimed to be heirs in the various courts?

A Yes. I have prepared a list showing appearances in the states of Texas, California and Nevada by appearance who claim to be heirs of Howard Hughes.

Q Okay. Is that marked Plaintiffs' Exhibit 1?

A Yes, that is Plaintiffs' Exhibit 1.

Q How many people, do you remember, that that totaled?

A I think the total is 413 persons, in the three jurisdictions, who have filed heirship claims.

Q Okay. Do you know whether these—the Probate Judge has found—these jurisdictions has found it necessary to appoint attorneys to represent unknown heirs?

A Yes. An ad litem was appointed by the Judge in the Harris County probate proceeding to represent the so-called unknown heirs of Howard Hughes. To [sic] ad litems were appointed in the State of Nevada to represent absent heirs, however, that order has been vacated since the date of the filing of our papers in this case; I made reference to it in the affidavit which was an attachment. But that order has been vacated.

[43] Q So, in Harris County they have a law firm, Butler-Binion?

A Butler, Binion, Rice, Cook & Knapp.

Q They were hired to represent, by the Probate Court, a class of people known as the unknown heirs; is that right?

A That is correct.

Q Okay.

MR. GEORGE: I will introduce Exhibit 1.

(Whereupon Plaintiffs'
(Exhibit No. 1 was received
(in evidence.

Q (By Mr. George) Now, could you briefly, for the Court, run through the other documents that you have prepared, showing the appearances in these Probate Courts and other courts?

A Yes. We put together a random sample of various pleadings by certain heirs. We picked those which contained the greatest number of appearances; one of them has some 161, I believe, persons, and another has about 160. Plaintiffs' Exhibits Numbered 2, 3, 4, 5 and 6 represent these random

pleadings which indicate appearances by various persons claiming heirship; these are all from the Texas Probate proceedings pending in Harris County, and this probably includes some, oh, 85 [44] to 90 percent of the persons who made heirship claims in that proceeding.

Q Now, these people are not the people who California seeks to join; is that right?

A With the exception of Plaintiffs' Exhibit 2, pertaining to Avis Hughes McIntyre and Rush Hughes; I believe those are included in the group of 22 that California seeks to join. With that exception, none of these individuals are included within that group.

Q Okay. And, there are 300 or so folks involved, is that right?

A 390-something in the Texas proceeding.

Q Who hired lawyers and came in and said they are the heirs?

A That is right.

MR. GEORGE: I will introduce Exhibits 2 through 6.

(Whereupon Plaintiffs'
(Exhibits 2 through 6 were
(received in evidence.

Q (By Mr. George) Now, briefly can you tell what Exhibit 8 is?

A Yes. Exhibit A—

Q Exhibit 8.

A Yes, Exhibit 8 is an appearance on behalf of Barbara [45] Francis Minton and Richard Hall Francis, with attached affidavits, which was filed in Probate No. 2 of Harris County, Texas, by the Austin firm of Clark, Thomas, Winters & Shapiro, and in which it is claimed that those two individuals are heirs of Howard Hughes.

Q And, those two individuals are not the heirs that these people that—

A They are not in the group of 22 which California seeks to join.

Q Okay.

MR. GEORGE: I will move the admission of Plaintiffs' Exhibit 8.

(Whereupon Plaintiffs'
(Exhibit No. 8 was received
(in evidence.

A Exhibit 7 is a letter from the Clerk of the 14th Court of Civil Appeals in Houston to all counsel, it relates that all counsel in the appeal of the Texas domicile case; it indicates that the Court ruled on a motion which was filed on behalf of the Texas administrators with the Appellate Court seeking, in effect, a stay of that proceeding pending a determination and for the duration of the temporary restraining order, which is in effect by Judge Roberts.

Q Okay.

[46] A It indicates that motion was granted.

MR. GEORGE: I will introduce Exhibit 7, and I have no more questions of Mr. Lilienstern.

(Whereupon Plaintiffs'
(Exhibit No. 7 was received
(in evidence.

MR. FALK: I have a few questions.

CROSS EXAMINATION

QUESTIONS BY MR. FALK:

Q Mr. Lilienstern, with respect to the various wills, the 35 wills that you have mentioned, are you familiar with a search that was performed by a California counsel and submitted to the California Probate Court concerning the possible existence of any will?

A Yes, I am.

Q And, that study concluded, did it not, that counsel, after a strenuous search, had been unable to locate any will which it concluded to be valid, isn't that right?

A I am not sure you can characterize any conclusion from that search. Certainly, no will was produced as a result of that search. But I believe the Howard Hughes Medical Institute has relied principally upon that will search, and the report, as the basis for its claim of a lost or destroyed will.

[47] Q With respect to the possibility of other intested [sic] heirs of Howard Hughes—that is, other than the 22 that we seek to add by this motion—are you familiar with the settlement agreement between the heirs?

A Yes, I am, generally so.

Q And, it recites there is — and it is before the Court — it recites therein, does it not, that the heirs have been advised by counsel?

A I would have to see a copy of it. I could probably get a copy pretty readily.

Q Would you do so, please?

A Surely. That was an exhibit to your —

Q Yes. Exhibit F to Mr. Mayer's declaration.

A Yes, I have that.

Q Let me see if I can draw your attention to —

A All right.

Q Why don't I go on to another question and I will come back to this, so Mr. Mayer can find the passage I am recalling?

A Okay.

Q Does the administrator contest the validity of the 35 wills that have been offered?

A No. An administrator cannot contest wills; it is the function of, really, any interested person, under most statutory schemes, to contest those wills.

[48] Q Your office represents a number of the heirs, I think 13 or 14 of the heirs?

A On some matters we do, yes.

Q In this capacity, have you filed pleadings challenging the authenticity of the 35 wills that have been offered?

A The only wills which we have filed pleadings contesting are the Grover-Walker will, which was — upon which a hearing was held in Las Vegas in the so-called Mormon will and the lost or destroyed will offered by the Howard Hughes Medical Institute, and in that instance we represented Mrs. Annette Gano Lummis only.

Q And, have any of the other 35 wills been offered; have petitions been filed seeking their admission?

A No, they are not.

Q They have not? With respect to any of the claims of heirship, has your office filed opposition to any of those claims of heirship at this time.

A I believe we have not. The heirship determination, at least in the Probate Courts of Nevada and Texas, have been, if you will, postponed pending a determination of any of the offered wills; the idea being that you have to first eliminate the possibility of testacy before you get to the issue of who the intestate heirs are. So we have not contested, to the best of my recollection, any of the heirship claims.

[49] Q I am sorry, we weren't aware that you were going to be testifying this morning, and I am a little unprepared. Drawing your attention to Paragraph H on Page 5, which is a recitation that states there, does it not, that the parties to the agreement have been advised separately — represented by counsel — advised them in connection with the settlement?

A With the desirability of such a settlement is the language there, yes.

Q There is a passage—I think we will be able to locate it in a moment—perhaps you recall where it is, Mr. Lilienstern?

A I have looked for it. You alluded to it earlier, and it may well be in here, but I have not seen it.

Q Obviously, I do not wish to inquire as to any advice you have given that it privileged, but have you in any non-privileged context—has your office expressed an opinion as to the validity to any of the other claims of heirship, that is, persons other than the 22 that are covered by this agreement?

A We have not specifically reviewed each claim of heirship and expressed an opinion, such as the heirs represented by Mr. Thomas' office. We have not tried to fit them into a genealogical chart to determine whether they may or may not be heirs at law of Howard [50] Hughes. We have, however, conducted a genealogical survey, if you will, and we have determined those persons that we believe would be the intestate heirs under the laws of Texas. It is clear that under the laws of California and Nevada that Mrs. Annette Gano Lummis is the sole heir; she is the only heir in those two jurisdictions.

Under the laws of Texas we believe we have identified those persons who are intestate heirs, with the exception of two persons, Avis Hughes McIntyre and Rush Hughes, both of whom asserted a claim under the theory of adoption by estoppel. It would have been necessary, had they not been included in the settlement agreement, for that doctrine to have been proven to the satisfaction of the Court of competent jurisdiction in order for them to be considered heirs at law.

Q But those two individuals are parties to the settlement agreement as amended, are they not?

A Yes, they are parties to Exhibit F—well, they are both Exhibit F—but the supplemental exhibit, yes.

Q Are you familiar with the statement that is on Page 7 of the estate's brief in this matter? Let me just read to you the passage I have in mind, it says: Plaintiffs are parties to that agreement in their individual capacity and believe that the parties to that agreement [51]—to the agreement referring, I take it, to the settlement agreement—believe that the parties to the agreement will eventually be determined to be the heirs at law of the decedent and that none of the documents purporting to be wills of the decedent will be admitted to probate.

A Yes, I am familiar with that.

Q Are you familiar with any facts which have come to your attention since that document was submitted which would cause you to alter your—or revise that statement?

A None whatsoever.

Q I think the reason we were having trouble finding the language is that it is in the supplemental agreement. If I can draw your attention to Paragraph 4 of that agreement, and let me read to you the statement that is contained therein.

A All right.

Q Each party hereto—

A Excuse me. What page is that on?

Q It is on Page 5.

A Okay.

Q Each party hereto hereby represents to each other party hereto that he or she knows of no facts which would entitle any person not a party hereto to a legitimate claim to a share of the estate if Howard Robard Hughes, [52] Jr. is ultimately found to have died intestate. And, again I ask you if you know of any facts since that statement was prepared that would cause that statement to be untrue?

A None.

Q So, as matters stand, so far as the heirs who are identified in the settlement agreement, so far as the 22 heirs are concerned, they believe in good faith, and they are advised by

their counsel in good faith, that Mr. Hughes died intestate and that they, as a group, represent all of the persons entitled to inherit under whatever applicable law of intestacy may apply; is that correct?

A That is correct.

MR. FALK: I have no further questions,

CROSS EXAMINATION

QUESTIONS BY MR. HILL:

Q Mr. Lilienstern, you will recall that when Mr. Falk was addressing the Court that he referred to a settlement agreement or an agreement between the State of California and the estate and made certain arguments to the Court that he felt were relevant here—

A Yes, sir.

Q —concerning the participation of the heirs in that agreement; do you remember that?

[53] A Yes, sir, I do.

Q This might be an appropriate time to let the record reflect, because we would do it some other time, in any event, since I know you have good familiarity with that agreement, certain aspects of it. And let the record reflect first: What was the nature of that agreement as to whether the State of California would receive any percentage of the to be established value of this entire estate even if Texas were finally adjudicated to be the domiciled state?

A I have a copy of it, and I would like to get it, Mr. Hill, if I may—

Q All right.

A —to insure that I am absolutely accurate.

THE COURT: Gentlemen, let's take a 15 minute recess.

(Whereupon, a recess was had at this time.)

Q (By Mr. Hill) Are you able to tell us at this point, following our morning recess, as to whether or not there

was contained, either in the basic agreement or supplemental letter agreements that were a part of the base agreement between California and the estate, a provision that California would retain 2 percent of the estate even if Texas was declared to be the domicile [54] state?

A You are talking about in connection the original action in the Supreme Court?

Q Yes, sir.

A Yes, sir, that is my understanding. California was guaranteed the 2 percent even if inheritance tax payments were made to the State of Texas.

Q And, then was it not further provided in that agreement that the State of California would receive 18 percent of the estate, 2 percent more than Texas could ever claim, if some other state other than Texas or California was declared to be the domicile state?

A If Nevada were declared to be, that is correct, because there would be no deduction from the 18 percent for taxes paid to Nevada.

Q Then, was there also contained in the agreement provision that the estate would furnish assistance to the State of California in the prosecution of their case, in terms of their investigation and legal memoranda?

A I know the administrators agreed to provide California with some materials; the exact nature of those materials I am not familiar with.

Q Now, Mr. Lilienstern, is it not your information that prior to the estate filing this case here in Judge Robert's [sic] court that California, the State of California, [55] acting through Mr. Falk, offered some inducement to the estate if they would file this proceeding in California?

A Certainly, the capsule [sic] for California encouraged us to file the interpleader in California or in Denver. As to inducements, I am not—Certainly, there was no formal agreement concerning any sort of settlement in exchange for filing in either of those two locations. Whether there were inferential suggestions of benefit, I am really not sure.

Q Wasn't it—

A I can certainly say we were encouraged to file it principally in Denver or in Los Angeles.

Q Without pinning you down, I notice that you and others in your law firm have worked on this; of course, you have been one of the lawyers that have been very active in it. Wasn't the inducement along the general lines of resurrecting the former agreement that you made in the Supreme Court?

A I am not sure I can say that, Mr. Hill. I was not a party to any conversation.

Q It is your understanding. I am not asking you to speak for anyone, I am just asking you to speak from your general understanding.

A It is my understanding it was implied that if the—

[56] MR. THOMAS: Your Honor, we are going to object. In the first place, we don't see the relevancy of any abandoned settlement agreement which is no longer operative, under any circumstance. Secondly, we are testifying about the content of documents, and the document is the best evidence of what it provides. And in the third place, I don't see that this has anything to do with any of the issues that are before the Court at this time. Apparently it is intended to be inflammatory and prejudicial and has nothing to do with the argument we presented.

THE COURT: That is overruled.

Q (By Mr. Hill) Give your best recollection.

A Well, it is my understanding that it was implied that certainly settlement negotiations, probably along the lines of the prior settlement agreement, would be undertaken if the action were filed in a forum other than Austin. All parties being aware of the fact, of course, that venue lies in the district where claimants reside, seeing California and Austin as the two possibilities. It was suggested that the heirs could be added, the action could be filed in Denver as a so-called neutral forum. We declined to do that.

Q Now, passing to another matter, while I have you here. Are you familiar with the California rulings, either at

[57] the administrative level, either at an administrative level by their comptroller's office or any rulings by their courts, as to whether or not Mr. Hughes was or was not domiciled in California at the time of—at some point from, say, 1966 up until the time of his death?

A There was a ruling by a California intermediate appellate court, in a case filed by Los Angeles Airways against Mr. Hughes and the Summa Corporation; I think the issue there was the effect of the California long arm statute jurisdiction over Mr. Hughes. This was at a time that he did not live within the state, I think he lived out of the country at that period of time. And I am familiar with a decision, perhaps unreported, although I have read it, in which the California court determined he was not a resident of California.

Q And what about the time—Is it not true that when Mr. Hughes sold his TWA stock in 1966, and had a gain on it of something in the neighborhood of 50 to 60 million dollars, that the State of California undertook to have him declared a domicile of [58] California at that time for purposes of assessing taxes against him?

A I am not familiar with that, Mr. Hill.

Q You are not familiar with that ruling?

A I am familiar with the fact that Mr. Hughes left California at or about the time of the sale of the TWA stock.

Q Are you familiar with an administrative ruling that was made following an investigation of his domicile—

A No, sir.

Q —by the State of California?

A No, sir.

Q All right. Did not the arguments and positions of the parties, that is, the estate and the State of Texas who were the litigants in the—the prime litigants in Houston, the domicile trial, did they not develop into a contest solely between Nevada domicile and Texas domicile?

A My understanding is that that is the way the case was presented.

Q And, presented to the Court in that fashion and argued in that fashion?

A That is my understanding.

MR. HILL: Thank you, sir.

MR. GEORGE: Your Honor, we move the admission of these exhibits. There have been no objections, and I don't believe the Court has ruled on them.

THE COURT: They will be admitted.

MR. GEORGE: Okay.

[59] (Whereupon, said exhibits (were received in evidence.

REDIRECT EXAMINATION

QUESTIONS BY MR. GEORGE:

Q Now, you had some questions from Mr. Falk concerning your law firm's or your judgment about whether some of your clients can win cases. Has there been any judicial determination, in any court, that Howard Hughes died intestate or who his heirs are?

A No. Certainly, my own beliefs are that we represent those persons who will be determined to be the heirs at law of Mr. Hughes; we are always confident when it comes to our clients' interest. I hope we are right, but no court has told us we are.

Q So, at this point the administrator is appointed by the courts and there is no heirship or determination of testacy or intestacy?

A That is correct.

MR. GEORGE: Pass the witness.

RECROSS EXAMINATION

QUESTIONS BY MR. FALK:

Q Mr. Lilienstern, you testified a moment ago, concerning conversations which occurred between the counsel for the estate and my office, me in particular. Were you a party to those conversations?

[60] A I have been a party to some of them. Which ones do you mean?

Q Whichever conversations you were referring to. You were a party to more than one of them?

A Mr. Hill asked me several questions about conversations betwen your office and the estate.

Q I am referring to conversations after the Supreme Court decision and before this lawsuit was filed here in this courtroom.

A I have been party to conversations during that period of time with your office, yes.

Q And, were you a party to any conversation in which I, or anyone else in my office, made any representation or offered any inducement, however you conceive it, to the estate in return for filing this lawsuit?

A No, sir, I was not.

Q It is true, is it not, that we encouraged your office to file the lawsuit in the District of Colorado?

A You encouraged us to join as parties the heirs contained in the settlement agreement—in the signator's settlement agreement—and to file it in Colorado, that is correct.

Q In other words, we encouraged you to do just what we are asking by this motion to have you compelled to do, isn't that right?

[61] A You encouraged us to file it in Colorado, and my recollection is you have half-heartedly encouraged us to file it in Los Angeles, but I think you conceded that it was extremely unlikely that we would do so.

Q And, do you recall the reasoning that we suggested to you as to why it ought to be brought in Colorado?

A Certainly, I think you felt your chances of prevailing were better in Denver than they are in Austin.

Q Was that the reason we offered—or encouraged you to file it in Denver—is that what we said, is that your testimony?

A You asked me my recollection of the reasons; I think those are the reasons. You keyed it to the neutral forum

theory, but it is implicit, it seems to me, in a forum argument that that is what you believe.

Q I am asking you to recall now, Mr. Lilienstern, what I said and not what you inferred or what was implicit. Wasn't it a fact that I said that would be a neutral forum, and encouraged you to file the action in the neutral forum?

A You certainly said it was a neutral forum.

Q And I did not, and no one else in my office, ever made any promise or offered any benefit to the estate for your doing that, isn't that correct?

A I think that is correct.

[62] MR. FALK: No further questions.

MR. GEORGE: I have no more questions of the witness.

MR. HILL: We have no more.

Filed May 11, 1979

In the United States District Court
Western District of Texas
Austin Division
[Title Omitted in Printing]

FIRST AMENDED COMPLAINT

Nature of the Action

1. This is an action in the nature of interpleader, including declaratory and injunctive relief. It is brought by the Texas Co-Administrators of the Estate of Howard R. Hughes, Jr., Deceased, to interplead, and for declaratory and injunctive relief (as hereinafter described) against, certain tax and other officials of California and Texas, the party Administrators, and also the United States of America, for the purpose of preventing other litigation that is costly, repetitious, and not meaningful; to resolve conflicting domicile claims; and for a unitary adjudication that protects the Estate against multiple claims and liability.

Parties

2. Plaintiff Annette Gano Lummis is a citizen of The State of Texas ("Texas"), and Plaintiff William Rice Lummis is a

citizen of The State of Nevada ("Nevada"); they are the Texas Temporary Co-Administrators ("Texas Administrators") of the Estate of Howard R. Hughes, Jr., Deceased ("Decedent") pending in Probate Court No. 2 of Harris County, Texas.

3. The assets comprising the estate of Decedent which are the subject of the several probate proceedings referred to herein are hereafter collectively referred to as the "Estate."

4. Defendant Mark White is the duly elected, qualified and acting Attorney General of Texas and is the successor in office to John Hill. Defendant Bob Bullock is the duly elected, qualified, and acting Comptroller of Public Accounts of Texas. Each official is a citizen of Texas; and each is charged by law with the duty of enforcing the death tax laws of Texas in a valid, legal manner.

5. Defendant White's business address is Supreme Court Building, Austin, Texas. His residence address is unknown to Plaintiffs but is located in Travis County, Texas.

6. Defendant Bullock's business address is 111 East Seventh Street, Austin, Texas. His residence address is 8301 Balcones Drive, Austin, Texas.

7. Defendant Kenneth Cory is the duly elected, qualified, and acting Controller of California. Defendant H. B. Alvord is the duly qualified and acting County Treasurer for the County of Los Angeles, California. Each official is a citizen of California; and each is charged by law with the duty of enforcing the death tax laws of California in a valid legal manner.

8. Defendant Cory's business address is Division of Inheritance and Gift Tax, 1227 O Street, Sacramento, California. His residence address is unknown to Plaintiffs but is located in California.

9. Defendant Alvord's business address is 500 West Temple Street, Room 137, Los Angeles, California. His residence address is unknown to Plaintiffs but is located in California.

10. Defendants William Rice Lummis and the First National Bank of Nevada are the Co-Special Administrators of the Estate in Nevada ("Nevada Administrators"). Defendant William Rice Lummis is a citizen of Nevada. Defendant First National Bank of Nevada is a national banking association located and having a principal place of business in Nevada; and is a citizen of Nevada as provided by 28 U.S.C. § 1348. The business address of Defendant Lummis is Summa Corporation, P.O. Box 14000, Las Vegas, Nevada 89156. His residence address is also Las Vegas, Nevada. The address of Defendant First National Bank of Nevada is P.O. Box 160, 302 E. Carson Avenue, Las Vegas, Nevada 89101. If it is ultimately determined that Decedent died a Nevada domiciliary, the intangible assets of the Estate will be remitted to the Nevada Administrators without diminution by reason of any state death tax.

11. Defendant William Rice Lummis is a citizen of Nevada and is the Ancillary Administrator of the Estate in Delaware ("Delaware Administrator").

12. Defendant William Rice Lummis is a citizen of Nevada and is the Provisional Administrator of the Estate in Louisiana ("Louisiana Administrator").

13. Defendant Richard Gano is a citizen of California and is the General Administrator of the Estate in California ("California Administrator"). His address is 2214 E. Sycamore Street, Anaheim, California 92806.

14. Defendant United States of America ("United States") is named a party as provided in 28 U.S.C. § 2410 and may be served by delivering a copy of the summons and complaint to the United States Attorney for the Western District of Texas, Jamie Boyd, whose address is Suite G-13, 655 East Durango, San Antonio, Texas 78206 and by sending a copy of the summons and complaint by certified mail to the Honorable Griffin Bell, Attorney General of the United States, Washington, D.C. 20530.

15. Jurisdiction over the subject matter and parties is conferred upon this Court by:

THE FEDERAL INTERPLEADER ACT

(a) 28 U.S.C. § 1335 in that:

(i) Plaintiffs William Rice Lummis and Annette Gano Lummis are citizens, respectively, of Nevada and Texas; are the Texas Administrators; and have in their custody or possession money or property of the value of $500.00 or more; and there are two or more adverse claimants, of diverse citizenship as defined in 28 U.S.C. § 1332, who are claiming or may claim to be entitled to such money or property, as hereinafter more fully appears.

(ii) In the action at bar, Defendants White and Bullock are citizens of Texas, and are claiming that Decedent died a Texas domiciliary, and that his Estate, including the aforesaid money and property, is subject to the death tax laws of Texas. These claims are adverse to the claims of Defendants Cory and Alvord, citizens of California, who are claiming that Decedent died a California domiciliary or domiciled without the United States, and that his Estate, including the aforesaid money and property is subject to the death tax laws of California.

The Defendants White and Bullock and Defendants Cory and Alvord are also claiming adversely to the following:

Plaintiffs, Texas Administrators;

Defendants Lummis and First National Bank of Nevada, Nevada Administrators; Defendant Lummis, Delaware Administrator; Defendant Lummis, Louisiana Administrator; and Defendant Gano, California Administrator. All of these parties claim that Decedent died domiciled in Nevada.

(iii) The United States is joined in this action pursuant to 28 U.S.C. § 2410. The United States has a federal estate tax claim and lien pursuant to 26 U.S.C. § 6324 upon the properties comprising the Estate of Howard R. Hughes, Jr., Deceased, the Administrators of which are:

a. *In the State of Nevada:*

William Rice Lummis, Co-Special Administrator
Summa Corporation
P.O. Box 14000
Las Vegas, NV 89156

First National Bank of Nevada, Co-Special Administrator
P.O. Box 160
302 East Carson Avenue
Las Vegas, NV 89101

b. *In the State of Texas:*

Annette Gano Lummis, Temporary Co-Administrator
2500 Exxon Building
Houston, TX 77002

William Rice Lummis, Temporary Co-Administrator
2500 Exxon Building
Houston, TX 77002

c. *In the State of Delaware:*

William Rice Lummis, Ancillary Administrator
c/o Morris, Nichols, Arsht and Tunnell
Twelfth and Market Street
P.O. Box 1374
Wilmington, DE 19899

d. *In the State of California:*
Richard C. Gano, Jr., General Administrator
c/o Gibson, Dunn & Crutcher
515 South Flower Street
Los Angeles, CA 90071

e. *In the State of Louisiana:*
William Rice Lummis, Provisional Administrator
c/o Milling, Benson, Woodward, Hillyer & Pierson
11th Floor, Whitney Building
New Orleans, LA 70130

Defendants White and Bullock and Defendants Cory and Alvord are claiming or may claim adversely to the United States, which is claiming or may claim that the Decedent died a Nevada domiciliary.

There is, however, no adversity between the United States and the Administrators, enumerated above, all of whom are claiming that Decedent died domiciled in Nevada, and that the intangibles of the Estate are subject solely to the estate tax laws of the United States, to the exclusion of the tax claims of both Defendants White and Bullock and Defendants Cory and Alvord.

GENERAL FEDERAL QUESTION

(b) 28 U.S.C. § 1331 and this Court's pendent jurisdiction are additional jurisdictional bases for this action, in that this action arises under the Constitution and laws of the United States, as hereinafter more fully appears. The amount in controversy exceeds the value of $10,000.00, exclusive of interest and costs.

CIVIL RIGHTS

(c) 42 U.S.C. § 1983, and its jurisdictional counterparts, 28 U.S.C. § 1343(3), and this Court's pendent jurisdiction afford

additional grounds for jurisdiction in that, *inter alia,* this is an action by plaintiffs on behalf of the Estate and other party Administrators, all of whom are citizens of the United States, to redress the deprivation by the Texas Defendants White and Bullock and the California Defendants Cory and Alvord, under color of law of their respective states, of valuable property rights, privileges and immunities of Plaintiffs that are secured by the Constitution and laws of Congress providing for equal rights of citizens of the United States.

Venue

16. Venue is laid in this District pursuant to 28 U.S.C. § 1397.

Background

17. Decedent died on April 6, 1976. On April 14, 1976, probate proceedings were initiated in the state courts of Texas, Nevada, and California. On May 4, 1976, an ancillary administration was initiated in Delaware, and on December 8, 1976, a provisional administration was initiated in Louisiana. All of these proceedings are pending; and the representatives of these Estate Administrations are parties to this action.

18. California and Texas each maintains, and has maintained at all relevant times herein, a system of death taxation whereby statutory claims and liens on the right of succession are imposed on real and tangible personal property located within its borders, and on the intangible personalty, wherever situated, of a person dying domiciled within that particular state. The authorities in each state, including Defendants White and Bullock in Texas and Defendants Cory and Alvord in California, are claiming that Decedent was domiciled in their respective state at the time of his death; and each set of state officials has taken steps to impose a tax on all the tangible assets of the Estate within its taxing juris-

diction, and on all the intangible assets of the Estate wherever situated. Additionally, Defendants Cory and Alvord are claiming that a part of the Estate is subject to California death tax on the ground that if Decedent did not die a California domiciliary, then he died domiciled without the United States. Plaintiffs allege that these aforesaid claims of domicile are conflicting; that each is without merit; and aver that Decedent died a Nevada domiciliary.

19. The intangible assets constitute almost the entire value of the Estate.

20. It is the law of both Texas and California that for death tax purposes a decedent has only one domicile at time of death; and since only the domiciliary state has the lawful right to tax the Decedent's intangibles, the claims of California and Texas are mutually exclusive.

21. On June 10, 1976, the Attorney General of Texas, and on October 13, 1976, the Comptroller of Public Accounts of Texas, filed appearances in the Texas probate proceeding, contending, *inter alia,* that Decedent was a Texas domiciliary at death and asserting a statutory death tax lien against all assets subject to Texas jurisdiction, including intangibles wherever located. On April 10, 1978, a judgment was entered in the Texas probate proceeding that Decedent was a Texas domiciliary at death. That judgment is being appealed, by the Texas Administrators in the Texas appellate courts, and therefore is not final. The appeal of that judgment has been stayed by the appellate court until dissolution of the Temporary Restraining Order previously issued by this Court or other injunctive relief which may hereafter be issued by this Court. California and Defendants Cory and Alvord are not parties to that proceeding and take the position that they will not be bound by and will accord no recognition to any judgment entered as to domicile therein.

22. California death tax proceedings were initiated with the appointment by the Superior Court, Los Angeles County, of an Inheritance Tax Referee to inventory and appraise the Estate sub-

ject to the jurisdiction of California. On August 24, 1977, Defendant Gano, California Administrator, submitted the California Inheritance Tax Declaration to the Referee. The California Administrator's Declaration asserted that Decedent was a Nevada domiciliary and reported only tangible personal and real property located in California. The Inheritance Tax Referee has stated that he intends to file a report with the Superior Court which takes the position that the Estate is liable for the California death tax on the ground that Decedent was domiciled in California at death and thereby tax the entire Estate, less the real and tangible personal property located outside California. Notice of the filing of the Report will be sent as required by law to all known persons potentially liable for the tax. Objections to the Report based, *inter alia,* on the claim of Nevada domicile, will be filed by the California Administrator, who will continue to maintain that Decedent died a Nevada domiciliary. This Report has not been filed, according to an affidavit of record in this action by the Inheritance Tax Referee, because the Referee believes that the Temporary Restraining Order previously entered by this Court enjoins him from doing so. The question of Decedent's domicile is therefore an issue in the California proceeding. Texas and Defendants White and Bullock are not parties to that proceeding and take the position that they will not be bound by and will accord no recognition to any judgment entered as to domicile therein.

23. Legal actions involving the Estate are also pending in the following jurisdictions:

(a) *Nevada.* Application to probate the so-called "Mormon Will" was filed in Nevada state court on April 30, 1976, by Noah Dietrich, as executor, and a contest to that application was filed by Annette Gano Lummis in her individual capacity on May 6, 1976. On June 23, 1976, the Attorney General of Texas filed a "Motion To Dismiss For Want Of Jurisdiction And Contest And Opposition To Probate" in the will contest proceeding in Nevada, con-

tending that Decedent was a Texas domiciliary at the time of his death and asking the Nevada court to stay its proceeding pending the outcome of the Texas proceeding. On August 27, 1976, the Nevada court denied the Texas Attorney General's Motion and ordered that the validity of the so-called "Mormon Will" be tried before a determination on the issue of domicile. The ensuing "Mormon Will" trial lasted some seven months. A judgment decreeing the will to be invalid was entered on June 23, 1978. The issue of domicile is still pending in the Nevada administration. The Texas Attorney General now disclaims that the appearance was a general appearance and asserts that neither Texas nor Defendants White or Bullock will be bound by or will accord recognition to any judgment as to domicile in that proceeding. Defendants Cory and Alvord have made no appearance in the Nevada proceeding and take the position that neither they nor California will be bound by or will accord recognition to any judgment as to domicile in that proceeding.

(b) *Delaware.* The vast majority of the assets of the Estate consist of the stock of Summa Corporation, a Delaware corporation wholly owned by the Decedent. On May 4, 1976, Summa Corporation instituted an interpleader action in the Chancery Court of New Castle County, Delaware, initially seeking a determination as to the ownership of its outstanding shares. Later the petition was amended so that the relief sought was a direction from the court as to which administrator is the domiciliary administrator to whom the shares should be remitted on termination of the Delaware administration. The Delaware Chancery Court has entered an order requiring Summa, until further order, to recognize William Rice Lummis, in his capacity as Ancillary Administrator of the Estate in Delaware, as the sole shareholder of Summa. Defendants Bullock and the Texas Attorney General appeared in the Delaware proceeding on or about June 11, 1976, and sought a dismissal of the action but now disclaim that their

appearance was a general appearance. Defendants White and Bullock take the position that neither they nor Texas will be bound by or will accord recognition to any judgment as to domicile in that proceeding. Defendants Cory and Alvord have made no appearance in the Delaware proceeding and take the position that neither they nor California will be bound by or will accord recognition to any judgment as to domicile in that proceeding.

24. On November 11, 1977, California filed with the United States Supreme Court a motion for leave to file with that Court a Bill of Complaint against Texas, seeking, *inter alia*, a decision that Decedent was not a Texas domiciliary at death. On June 22, 1978 the Court denied, *per curiam*, the California Motion. Four of the Justices, however, concurred in the view that the Estate had available as a remedy, to avoid conflicting state court judgments on domicile and resulting multiple death taxation, an interpleader action, brought in a federal district court under 28 U.S.C. §1335.

25. In view of (i) the continuing failure or unwillingness of both Texas and Defendants White and Bullock and California and Defendants Cory and Alvord to submit the basic issue of domicile to the jurisdiction of each other's courts, or to the jurisdiction of courts in other states, in such a manner that a conclusive adjudication would result, and (ii) the refusal of the United States Supreme Court to grant leave to California to file a complaint with that Court against Texas, Plaintiffs allege that a United States District Court with interpleader jurisdiction provides the only available forum wherein an adjudication of the domicile of Decedent, binding upon all indispensable parties, and all other persons, if any, needed for a just adjudication, including the Texas and California taxing officials, can be made and unlawful multiple taxation of the Estate avoided. Further, the threat of multiple litigation interferes with the orderly administration of the Estate, causes dramatically increased expenses of litigation for the Estate, and delays distribution of the Estate. Plaintiffs will

suffer irreparable harm and injury unless the present interpleader action is allowed to continue.

26. Decedent's Administrators in all jurisdictions have actively sought a just and reasonable settlement of the conflicting domicile and tax claims with the appropriate officials of Texas and California. To date all such efforts have been unsuccessful, thereby necessitating the institution of the case at bar.

COUNT I.

Claim for Interpleader

27. Plaintiffs reallege the allegations contained in Paragraphs 1-26 above.

28. The Plaintiffs in this action are the Texas Temporary Co-Administrators of the Estate of Howard R. Hughes, Jr., Deceased, and have in their custody Estate property exceeding the value of $500.00. There are numerous adverse claims to that and to other property of the Estate which are asserted by two or more claimants of diverse citizenship.

29. As a result of the facts hereinabove alleged, Plaintiffs are faced with the assertion of conflicting claims of domicile and death taxes that subject the Estate to costly and unwarranted expense and to the substantial risk that the courts of Texas and California will make inconsistent adjudications as to the liability of the Estate for death taxes, despite the fact that the lawful application of inheritance tax laws of Texas and California on intangible assets of the Estate must recognize that the claims are mutually exclusive.

30. Plaintiffs allege that the Estate would be insufficient to discharge the aggregate tax assessments claimed by Texas (approximately 16 percent), California (approximately 24 percent), and the United States (approximately 77 percent less an approxi-

mate 16 percent state tax credit, if allowed, or 61 percent), assessments which would result in a combined tax rate of 101 percent of the net federal taxable estate.

31. Because California law does not permit certain deductions from the gross estate which are allowable for federal estate tax purposes, California's real rate of taxation significantly exceeds its approximate 24 percent rate. Thus, should California and Texas each determine that Decedent was a domiciliary of its respective state, the Estate would be subjected to an effective death tax rate well in excess of 101 percent of the net federal taxable estate, and if the United States disallowed any tax credit on the theory that the Decedent died domiciled in Nevada (which has no inheritance tax), the Estate would be subject to even a more grotesque aggregate tax rate. Because of this and other related reasons, the unitary adjudication by this Court binding on all tax claimants is required.

32. The United States is a claimant because a lien exists in its favor against the Estate for payment of the federal estate tax. Plaintiffs admit the merits of the claim and lien status of the United States; and aver that there is no adversity between Plaintiffs and the United States, since successful assertion of Plaintiffs' claim that Decedent died a Nevada domiciliary would enable the United States to collect approximately 77 percent of the federal taxable estate undiminished by any credit for state death tax on intangibles. There is, however, adversity between the United States and Defendants White and Bullock who claim that Decedent died a Texas domiciliary and between the United States and Defendants Cory and Alvord who claim that Decedent died a California domiciliary or domiciled without the United States. Either claim, if sustained, would reduce the amount due the United States by approximately 16 percent of the net federal taxable estate. The United States is a party needed for a just adjudication under Rule 19, Federal Rules of Civil Procedure,

because it has a significant interest in receiving the full federal estate tax undiminished by a state death tax credit on intangibles. If the Estate pays a state death tax to any state, the United States will be obligated to grant the Estate a state death tax credit up to the maximum allowed (approximately 16 percent), under the mandatory language of 26 U.S.C. § 2011. This action, therefore, provides the United States with the only opportunity it will have to litigate its entitlement to that amount.

33. Plaintiffs have no plain, speedy and efficient remedy in the state courts of either Texas or California. Only a federal forum can obtain jurisdiction over all indispensable parties and render an adjudication binding upon all persons having an interest in the subject matter of this case.

34. Federal interpleader in a proper United States District Court is available and provides an effective remedy to prevent multiple death taxes on the intangible property of the Decedent where the sole basis of the tax is the domicile of the Decedent at the time of death. In equity and good conscience, the present federal interpleader action should now proceed so that costly, repetitious litigation in various state forums may be barred and a unitary adjudication rendered that will prevent multiple state death taxation that is arbitrary, confiscatory, and violative of the due process clause of the Fourteenth Amendment and the civil rights of the Plaintiffs and the parties they represent, all as secured by the Constitution and laws of the United States.

35. The prosecution, during the pendency of this action, of proceedings in the various state courts to determine the domicile of Decedent at the time of death will adversely affect the property involved in this action and will interfere with the jurisdiction of this Court. Defendants White and Bullock and Defendants Cory and Alvord and the various party Administrators should be enjoined pursuant to 28 U.S.C. § 2361 and Rule 65, Federal Rules of Civil Procedure, from continuing, instituting, or prosecuting

any proceeding to determine the domicile of Decedent at the time of death, other than in this action. Plaintiffs allege that reasonable cause exists for failure to make any state death tax payments until the issue of Decedent's domicile is finally determined in this action. Defendants Bullock, Cory, White, and Alvord should be further enjoined from asserting or prosecuting any claim for state death taxes or any penalties based upon a failure to pay such death taxes prior to the final determination of this action.

36. Property and funds being administered by Plaintiffs and the Defendant Administrators are held by them in their fiduciary capacities and are subject to the supervision and control of the probate courts described above. Accordingly, they cannot deposit said property and funds with this Court. Plaintiffs, as individuals, are subject to the in personam jurisdiction of the Court and will abide by the final judgment rendered in this action respecting the conflicting claims which are the subject hereof, and are prepared to give such bond to the Clerk of this Court as the Court may deem proper. Plaintiffs further allege, in this regard, that because their conduct, and that of the party Administrators, with respect to the property and funds within their control, is subject to fiduciary standards and judicial control by the various probate courts, a bond in a nominal amount will protect the legitimate interests of the remaining Defendants.

37. Plaintiffs allege that the acts of Defendants White and Bullock, purportedly on behalf of Texas, as hereinabove alleged, and the acts of Defendant Cory, purportedly on behalf of California, and the acts of Defendant Alvord, purportedly on behalf of the County of Los Angeles, as alleged hereinabove, are in fact and in law wholly without any valid legal authority for the reason that Decedent was a Nevada domiciliary at the time of his death. Decedent, therefore, could not have been a domiciliary of any other jurisdiction, and under the inheritance laws of both Texas and California domiciliary death taxes cannot lawfully be imposed.

38. Plaintiffs allege that Defendants White and Bullock of Texas and Defendants Cory and Alvord of California, while acting under color of state law, have been and are now tort-feasors in that they have been and are now acting without legal warrant.

COUNT II

General Federal Question

39. Plaintiffs reallege the allegations contained in Paragraphs 1-38 above.

40. Plaintiffs allege that even if Decedent were not domiciled in Nevada at the time of his death, nevertheless, the acts of Defendant White and Defendant Bullock, and each of them, purportedly on behalf of the state of Texas, as hereinabove alleged, constitute a denial of due process of law in violation of the Fourteenth Amendment of the United States Constitution for the reason that while the law of each of the states of Texas and California recognizes that a decedent has but one domicile for purposes of death taxes, the proceedings in neither state can protect the Estate from having to make multiple payments of the same obligation on the intangibles of the Estate.

41. Plaintiffs allege that even if Decedent were not domiciled in Nevada at the time of his death, nevertheless, the acts of Defendant Cory, purportedly on behalf of the state of California, as hereinabove alleged, and Defendant Alvord, purportedly on behalf of the County of Los Angeles, as hereinabove alleged, constitute a denial of due process of law in violation of the Fourteenth Amendment of the United States Constitution for the reason that while the law of each of the states of Texas and California recognizes that a decedent has but one domicile for purposes of death taxes, the proceedings in neither state can protect the Estate from having to make multiple payments of the same obligation on the intangibles of the Estate.

COUNT III

Civil Rights

42. Plaintiffs reallege the allegations contained in Paragraphs 1-41 above.

43. Plaintiffs allege that only a United States District Court exercising interpleader jurisdiction can provide a plain, speedy, and efficient remedy, that can secure the presence of indispensable parties needed for a just adjudication, with respect to all of the assets of the Estate; the state officials of both Texas and California are aware of this, yet they have blocked and are now attempting to block a unitary adjudication by this Court that would be fair to all concerned; and that the aforesaid conduct has constituted and will constitute, unless restrained, a deprivation to the Estate of rights, privileges and immunities, secured it by the Constitution and federal law, all without due process of law as guaranteed by the Fourteenth Amendment.

44. Plaintiffs allege that the right to travel from state to state is a right protected by the United States Constitution. The actions of Defendants White and Bullock and Defendants Cory and Alvord, under color of state law, will and are designed to penalize Decedent's Estate because of Decedent's travel among various states.

45. Plaintiffs allege that Defendants White and Bullock and Defendants Cory and Alvord are acting under color of state law to deprive the as yet undetermined heirs ("heirs") of rights and privileges and immunities guaranteed them by the Fourteenth Amendment of the United States Constitution, in violation of the provisions of 42 U.S.C. § 1983. Defendants White and Bullock and Defendants Cory and Alvord claim the right to obtain in the courts of their respective states a judgment concerning the issue of the Decedent's domicile at death. Based on such judgments, both sets of Defendant taxing officials assert the right to levy a tax upon the passing of the intangible assets under the laws of

their respective states. The power of a state to tax the heirs of an estate is based exclusively on the state's power to transfer title in the property to the heirs. However, in the face of conflicting adjudications, none of the Defendant taxing officials or the states on whose behalf they purport to act would have the power or capability to award dominion and control of the intangible assets to the heirs. For the Defendant officials to endeavor to tax the heirs, despite the fact that the heirs cannot obtain from the states any power of dominion and control over the intangible assets of the Estate, is a clear violation of due process and equal protection of the law as guaranteed by the Fourteenth Amendment. Plaintiffs, as Administrators of the Estate, are proper parties to assert the rights and privileges and immunities of the heirs.

46. Plaintiffs further allege that Defendants White and Bullock and Defendants Cory and Alvord are acting under color of state law to deprive the heirs of their Fourteenth Amendment rights by assertions and attempts to impose personal liability on the heirs for death taxes upon intangibles. In the event of conflicting domiciliary adjudications, the death tax liability will exceed the assets of the Estate. If, as the Defendant taxing officials assert, the heirs are personally liable for payment of death taxes, the heirs will be required to pay the deficiency from their personal assets. Exacting such a penalty because of a family relationship deprives the heirs of equal protection of the law and due process as guaranteed by the Fourteenth Amendment of the United States Constitution. Plaintiffs, as Administrators of the Estate, are proper parties to assert the rights and privileges and immunities of the heirs.

47. Accordingly, Defendants White and Bullock and Defendants Cory and Alvord, and each of them, should be enjoined from depriving Plaintiffs, under color of state law, of valuable property rights without according Plaintiffs both due process of law and equal protection of the law, by proceeding in different forums, none of which can afford jurisdiction over all indispensable parties.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully pray that this Court:

1. Require that the Defendants White, Bullock, Cory, and Alvord; and the party Administrators; and the Defendant United States, all be ordered to interplead in this action their claims against the assets comprising the Estate.

2. Adjudge and declare that Decedent was domiciled in Nevada, and therefore not in any other jurisdiction, at the time of his death, and that all parties to this action abide by that declaration.

3. Adjudge and declare that Plaintiffs are not liable to either Texas or California for death taxes levied on intangibles of Decedent's Estate and that Defendants White and Bullock and Defendants Cory and Alvord are acting without any legal warrant and will continue so to act unless restrained by this Court; and that they and each of them be enjoined from levying and collecting death taxes on the intangible assets of the Estate.

4. Restrain and enjoin Defendants White, Bullock, Cory, and Alvord; and the party Administrators; and their officers, agents, servants, employees, and attorneys and those persons in active concert or participation with them, from instituting or prosecuting any proceeding in any state or United States court, the result of which will or would be to determine the domicile of the Decedent at death, other than in this action.

5. Restrain and enjoin the Defendants White and Bullock and Defendants Cory and Alvord, and their officers, agents, servants, employees, and attorneys and those persons in active concert or participation with them, and each of them, from assessing or collecting any penalties against Plaintiffs for failure to pay state death taxes which may otherwise accrue during the pendency of this suit.

6. In the alternative, should the Court determine that Decedent was domiciled in a jurisdiction other than Nevada, then adjudge and declare in which other jurisdiction Decedent was domiciled at the time of his death and further adjudge and declare that he was domiciled only in that jurisdiction at the time of his death and that all parties to this action abide by that declaration.

7. Grant Plaintiffs all other and further relief, including their costs and attorneys' fees, to which entitlement is shown.

Respectfully submitted,

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Robert R. Herring, Jr.

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AFFIDAVIT

THE STATE OF TEXAS
COUNTY OF HARRIS—ss

BEFORE ME, the undersigned authority, personally appeared O. Clayton Lilienstern, a person to me well known who on his oath did depose and say that he has read the following First Amended Complaint, that he has personal knowledge of the facts recited therein and those facts are true and correct.

O. CLAYTON LILIENSTERN
Affiant

(Jurat Omitted in Printing)

(Certificate of Service Omitted in Printing)

Filed May 18, 1979

In the United States District Court
for the Western District of Texas
Austin Division

(Title Omitted in Printing)

PLAINTIFFS' REQUEST OF DEFENDANT BULLOCK FOR ADMISSION OF FACTS PURSUANT TO RULE 36, FEDERAL RULES OF CIVIL PROCEDURE

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, Plaintiffs request Defendant Bob Bullock, Comptroller of Public Accounts of the State of Texas, to admit, for the purposes of this action only, the truth of the following facts:

1) Defendant Bullock is a citizen of Texas.

2) Defendant Bullock is the duly elected, qualified, and acting Comptroller of Public Accounts of the State of Texas and as such is charged with assessing and collecting the Texas inheritance tax in a valid, legal manner.

3) Defendant Bullock claims, and has claimed at all relevant times herein, that Decedent, Howard R. Hughes, Jr., was domiciled in Texas at death.

4) Defendant Bullock claims that Howard R. Hughes, Jr. could have only one domicile at death.

5) Defendant Bullock denies that Decedent, Howard R. Hughes, Jr. was domiciled in Nevada at death.

6) Defendant Bullock denies that Decedent, Howard R. Hughes, Jr. was domiciled in California at death.

7) Defendant Bullock claims that the intangible assets of the Estate of Howard R. Hughes, Jr., wherever located, are subject to inheritance taxation under the laws of Texas, because Hughes was domiciled within the state of Texas at death.

8) On October 13, 1976, Defendant Bullock filed an Appearance in Cause No. 139,362, in Probate Court No. 2, Harris County, Texas, and claimed that Howard R. Hughes, Jr. was domiciled in Texas at death, and that a lien existed in favor of the state of Texas upon his entire Estate.

9) On April 10, 1978, Defendant Bullock, as a party to the action in Probate Court No. 2, Harris County, Texas, obtained a judgment declaring that Howard R. Hughes, Jr. was domiciled within the state of Texas at death. An appeal from this judgment has been perfected by the Plaintiff Texas Administrators and is now pending.

10) Since the death of Howard R. Hughes, Jr., Defendant Bullock has refused to submit to the jurisdiction of the state courts of California, and claims that he would not be bound by a judgment of the courts of California or of any other state purporting to determine the domicile of Hughes at death.

11) Defendant Bullock claims that the inheritance tax laws of Texas impose a liability for payment of the inheritance tax upon the heirs-at-law of a decedent. Therefore, Defendant Bullock claims that if the tax cannot be collected from the Estate of Howard R. Hughes, Jr., then he has the right to proceed directly against Hughes' heirs-at-law and to levy upon and collect the tax from their personal assets.

12) If the Texas Courts make a determination that Howard R. Hughes, Jr. was domiciled at death in Texas, then Texas

inheritance tax law with respect to intangibles will not provide a credit, reduction, or other recognition against Texas inheritance taxes for domicile-based inheritance taxes paid to any other state.

13) Unless restrained from doing so by this Court, Defendant Bullock will continue to prosecute his claim to inheritance taxes on the intangible assets of the Estate of Howard R. Hughes, Jr. based on his claim that Hughes was domiciled in Texas at the time of his death.

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(Certificate of Service Omitted in Printing)

Filed May 18, 1979

In the United States District Court
for the Western District of Texas
Austin Division

[Title Omitted in Printing]

PLAINTIFFS' REQUEST OF DEFENDANT WHITE FOR ADMISSION OF FACTS PURSUANT TO RULE 36, FEDERAL RULES OF CIVIL PROCEDURE

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, Plaintiffs request Defendant Mark White, Attorney General of the State of Texas, to admit, for the purposes of this action only, the truth of the following facts:

1) Defendant White is a citizen of Texas.

2) Defendant White is the duly elected, qualified, and acting Attorney General of Texas and as such is charged with enforcing the laws of Texas in a valid, legal manner.

3) Defendant White, and his predecessor in office John Hill, claim and have claimed at all relevant times herein, that Decedent, Howard R. Hughes, Jr., was domiciled in Texas at death.

4) Defendant White claims that Howard R. Hughes, Jr. could have only one domicile at death.

5) Defendant White denies that Decedent, Howard R. Hughes, Jr. was domiciled in Nevada at death.

6) Defendant White denies that Decedent, Howard R. Hughes, Jr. was domiciled in California at death.

7) Defendant White claims that the intangible assets of the Estate of Howard R. Hughes, Jr., wherever located, are subject to inheritance taxation under the laws of Texas, because Hughes was domiciled within the state of Texas at death.

8) On June 10, 1976, the Attorney General of Texas filed an Appearance in Cause No. 139,362, in Probate Court No. 2, Harris County, Texas, claiming that Howard R. Hughes, Jr. was domiciled in Texas at death.

9) On April 10, 1978, the Attorney General of Texas, as a party to the action in Probate Court No. 2, Harris County, Texas obtained a judgment declaring that Howard R. Hughes, Jr. was domiciled within the state of Texas at death. An appeal from this judgment has been perfected by the Plaintiff Texas Administrators and is now pending.

10) Since the death of Howard R. Hughes, Jr., Defendant White (and his predecessor in office, John Hill) has refused to submit to the jurisdiction of the state courts of California, and claims that he would not be bound by a judgment of the courts of California or of any other state purporting to determine the domicile of Hughes at death.

11) Defendant White claims that the inheritance tax laws of Texas impose a liability for payment of the inheritance tax upon the heirs-at-law of a decedent. Therefore, Defendant White claims if the tax cannot be collected from the Estate of Howard R. Hughes, Jr., then he has the right to proceed directly against Hughes' heirs-at-law and to levy upon and collect the tax from their personal assets.

12) If the Texas Courts make a determination that Howard R. Hughes, Jr. was domiciled at death in Texas, then Texas inheritance tax law with respect to intangibles will not provide for a credit, reduction, or other recognition against Texas inheritance taxes for domicile-based inheritance taxes paid to any other state.

13) Unless restrained from doing so by this Court, Defendant White will continue to prosecute his claim to inheritance taxes on the intangible assets of the Estate of Howard R. Hughes, Jr.

based on his claim that Hughes was domiciled in Texas at the time of his death.

ANDREWS, KURTH, CAMPBELL & JONES

By .....

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(Certificate of Service Omitted in Printing)

Filed June 4, 1979

In the United States District Court
for the Western District of Texas
Austin Division

(Title Omitted in Printing)

DEFENDANTS CORY'S AND ALVORD'S MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Defendants Cory and Alvord, pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, and file this Motion to Dismiss the above-styled and numbered cause. As grounds therefor the Defendants would respectfully show as follows:

I.

The Plaintiffs' First Amended Complaint is barred by the Eleventh Amendment of the United States Constitution and by the doctrine of sovereign immunity.

II.

This Court lacks jurisdiction over the subject matter of Plaintiffs' interpleader claim because there are not "two or more adverse claimants of diverse citizenship," as required by 28 U.S.C. § 1335.

III.

The Plaintiffs' First Amended Complaint fails to state a constitution [sic] claim upon which relief can be granted under 28 U.S.C. §§ 1331 and 1343(3). The assertion of pendent jurisdiction would be improper since there is no jurisdiction over the interpleader cause of action.

IV.

This Court lacks jurisdiction over the persons of Defendants Cory and Alvord for any alleged claim under 28 U.S.C. §§ 1331 and 1343(3).

V.

The venue of this action in the Western District of Texas for any alleged claim under 28 U.S.C. §§ 1331 and 1343(3) is improper.

VI.

The Defendants Cory and Alvord have previously filed a memorandum in support of their Motion to Dismiss the Plaintiff's Original Complaint. That memorandum was filed on February 12, 1979. Rather than burdening the Court's files with another copy of that memorandum, the Defendants Cory and Alvord would respectfully refer the Court to that memorandum, which is equally applicable to this motion. The reply of Defendants Cory and Alvord to the Plaintiffs' response to that memorandum will be filed on or before June 13, 1979, as per the order of the Court.

WHEREFORE, PREMISES CONSIDERED, the Defendants Cory and Alvord respectfully pray that the above-styled and numbered cause be dismissed and that all costs be taxed against the Plaintiffs.

Respectfully submitted,

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Filed June 18, 1979

In the United States District Court
for the
Western District of Texas
Austin Division

[Title Omitted in Printing]

DEFENDANT WHITE'S RESPONSE TO PLAINTIFFS' REQUEST FOR ADMISSION OF FACTS

With respect to the truth of the matters in the numbered statements in Plaintiffs' Request for Admission of Facts served herein on May 18, 1979, Defendant Mark White, Attorney General of the State of Texas, responds in correspondingly numbered paragraphs as follows:

1. Denied. Defendant White admits that as a private individual he is a citizen of the State of Texas; however, he denies that as a defendant in his official capacity as the Attorney General of the State of Texas he is a citizen of Texas for purposes of diversity jurisdiction.

2. Admitted.

3. Admitted.

4. Denied. Defendant White admits that he claims Hughes had only one domicile at death (Texas) but recognizes the possibility of differing determinations of domicile by the judicial systems of two or more states and therefore must deny that Hughes "could have only one domicile at death."

5. Admitted.

6. Admitted.

7. Qualifiedly admitted. The statement is not untrue on its face, but good faith impels Defendant White to deny the false

impression created by final clause—*viz.*, that Defendant White claims that the intangible assets of the Hughes estate are subject to Texas inheritance taxation *solely* because Hughes was domiciled in Texas at death. On the contrary, Defendant White asserts that the estate's intangible assets are subject to Texas inheritance taxation on any basis (and to the fullest extent) permitted by the laws of the State of Texas and the Constitution of the United States.

8. Qualifiedly admitted. A pleading styled "Appearance of the State of Texas" was so filed by the Attorney General of Texas on behalf of the State of Texas.

9. Admitted.

10. Qualifiedly admitted. Defendant White has not refused to submit to the jurisdiction of the state courts of California for a determination of Hughes' domicile, as he is unaware of any domicile litigation pending there in which an opportunity to refuse to join existed. Defendant White admits that he has not submitted the issue of Hughes' domicile at death to the California state courts and that if he were now presented the chance to do so (and if he were not restrained from doing so), he would decline. Defendant White further admits that he has not submitted the issue of Hughes domicile at death to the courts of any state except Texas and, as matters now stand, will not be bound by the domicile judgment of any state court not located in Texas.

11. Qualifiedly admitted. Defendant White admits he claims that any person acquiring any portion of an estate subject to taxation under the inheritance tax laws of the State of Texas is personally liable for the tax imposed by those laws. He further admits he claims that unless that tax is paid or unless the lien securing its payment is released the tax may be collected from any distributee to the fullest extent permitted by the laws of the State of Texas and the Constitution of the United States. However Defendant White denies he claims that the extent of a distributee's personal liability for Texas death taxes can exceed the value of the estate property received by that distributee.

12. Objection. Defendant White refuses to answer paragraph number twelve because it requests the admission of a pure question of law and is therefore improper under Rule 36 of the Federal Rules of Civil Procedure.

13. Qualifiedly admitted. Defendant White admits that the statement is not untrue, but denies the false impression created by the final clause, which is the same as that found objectionable in paragraph number seven. Unless restrained by court order, Defendant White will continue to prosecute the inheritance tax claim of the State of Texas on the intangible assets of the Hughes estate on any basis (and to fullest extent) permitted by the laws of the State of Texas and the Constitution of the United States.

Respectfully submitted,

MARK WHITE
The Attorney General of Texas

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[Certificate of Service Omitted in Printing]

Filed June 18, 1979

In the United States District Court
for the
Western District of Texas
Austin Division

[Title Omitted in Printing]

DEFENDANT BULLOCK'S RESPONSE TO PLAINTIFFS' REQUEST FOR ADMISSION OF FACTS

With respect to the truth of the matters in the numbered statements in Plaintiffs' Request for Admission of Facts served herein on May 18, 1979, Defendant Bob Bullock, Comptroller of Public Accounts of the State of Texas, responds in correspondingly numbered paragraphs as follows:

1. Denied. Defendant Bullock admits that as a private individual he is a citizen of the State of Texas; however, he denies that as a defendant in his official capacity as the Comptroller of Public Accounts of the State of Texas he is a citizen of Texas for purposes of diversity jurisdiction.

2. Admitted.

3. Admitted.

4. Denied. Defendant Bullock admits that he claims Hughes had only one domicile at death (Texas) but recognizes the possibility of differing determinations of domicile by the judicial systems of two or more states and therefore must deny that Hughes "could have only one domicile at death."

5. Admitted.

6. Admitted.

7. Qualifiedly admitted. The statement is not untrue on its face, but good faith impels Defendant Bullock to deny the false impression created by final clause— *viz.*, that Defendant Bullock claims that the intangible assets of the Hughes estate are subject

to Texas inheritance taxation *solely* because Hughes was domiciled in Texas at death. On the contrary, Defendant Bullock asserts that the estate's intangible assets are subject to Texas inheritance taxation on any basis (and to the fullest extent) permitted by the laws of the State of Texas and the Constitution of the United States.

8. Admitted.

9. Admitted.

10. Qualifiedly admitted. Defendant Bullock has not refused to submit to the jurisdiction of the state courts of California for a determination of Hughes' domicile, as he is unaware of any domicile litigation pending there in which an opportunity to refuse to join existed. Defendant Bullock admits that he has not submitted the issue of Hughes' domicile at death to the California state courts and that if he were now presented the chance to do so (and if he were not restrained from doing so), he would decline. Defendant Bullock further admits that he has not submitted the issue of Hughes domicile at death to the courts of any state except Texas and, as matters now stand, will not be bound by the domicile judgment of any state court not located in Texas.

11. Qualifiedly admitted. Defendant Bullock admits he claims that any person acquiring any portion of an estate subject to taxation under the inheritance tax laws of the State of Texas is personally liable for the tax imposed by those laws. He further admits he claims that unless that tax is paid or unless the lien securing its payment is released the tax may be collected from any distributee to the fullest extent permitted by the laws of the State of Texas and the Constitution of the United States. However Defendant Bullock denies he claims that the extent of a distributee's personal liability for Texas death taxes can exceed the value of the estate property received by that distributee.

12. Objection. Defendant Bullock refuses to answer paragraph number twelve because it requests the admission of a pure question of law and is therefore improper under Rule 36 of the Federal Rules of Civil Procedure.

13. Qualifiedly admitted. Defendant Bullock admits that the statement is not untrue, but denies the false impression created by the final clause, which is the same as that found objectionable in paragraph number seven. Unless restrained by court order, Defendant Bullock will continue to prosecute the inheritance tax claim of the State of Texas on the intangible assets of the Hughes estate on any basis (and to fullest extent) permitted by the laws of the State of Texas and the Constitution of the United States.

Respectfully submitted,

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[Certificate of Service Omitted in Printing]

Filed June 20, 1979

In the United States District Court
for the Western District of Texas
Austin Division

[Title Omitted in Printing]

RESPONSES BY DEFENDANT CORY TO PLAINTIFFS' REQUESTS FOR ADMISSION

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, Defendant Kenneth Cory, Controller of the State of California, hereby responds to the Requests for Admission previously served upon him by Plaintiffs.

Request for Admission No. 1:

Defendant Cory is a citizen of California.

Response to Request for Admission No. 1:

Defendant Cory admits Request No. 1 only insofar as he construes it to refer to his personal citizenship as an individual. The Request does not assert that Defendant Cory is a citizen of California (a) for diversity purposes or (b) in his capacity as the Controller of the State of California and, accordingly, Defendant Cory neither admits nor denies these assertions.

Request for Admission No. 2:

Defendant Cory is the duly elected, qualified, and acting Controller of the State of California and as such is charged with enforcing the inheritance tax laws of California in a valid, legal manner.

Response to Request for Admission No. 2:

Defendant Cory admits Request No. 2.

Request for Admission No. 3:

Defendant Cory claims, and has claimed at all relevant times herein, that Decedent, Howard R. Hughes, Jr., was domiciled in California at death.

Response to Request for Admission No. 3:

Defendant Cory admits Request No. 3. In the alternative, Defendant Cory claims that Decedent was domiciled outside the United States at the time of his death.

Request for Admission No. 4:

Defendant Cory claims that Howard R. Hughes, Jr., could have only one domicile at death.

Response to Request for Admission No. 4:

Defendant Cory presently believes that under the laws of Texas, California and Nevada, a person may only have one domicile at any one time. Insofar as any of these bodies of law are applicable, therefore, Defendant Cory admits Request No. 4. Defendant Cory can neither admit nor deny this Request should some other body of law be held to be applicable.

Request for Admission No. 5:

Defendant Cory denies that Decedent, Howard R. Hughes, Jr., was domiciled in Nevada at death.

Response to Request for Admission No. 5:

Defendant Cory admits Request No. 5.

Request for Admission No. 6:

Defendant Cory denies that Decedent, Howard R. Hughes, Jr., was domiciled in Texas at death.

Response to Request for Admission No. 6:

Defendant Cory admits Request No. 6.

Request for Admission No. 7:

Defendant Cory claims that the intangible assets of the Estate of Howard R. Hughes, Jr., wherever located, are subject to inheritance taxation under the laws of California, because Hughes was domiciled within the State of California at death.

Response to Request for Admission No. 7:

If Howard R. Hughes, Jr., was domiciled in California at the time of his death, all the intangible assets of the Estate of Howard R. Hughes, Jr., wherever located, would be subject to inheritance taxation under the laws of California. Defendant Cory therefore admits Request No. 7. If Decedent was domiciled without the United States at the time of his death, some or all of the intangible assets of the Estate of Howard R. Hughes, Jr., wherever located, would be subject to inheritance taxation under the laws of California.

Request for Admission No. 8:

The administration of the Estate of Howard R. Hughes, Jr., is pending in the Superior Court of the State of California for the County of Los Angeles, being cause No. 621,359.

Response to Request for Admission No. 8:

Defendant Cory admits Request No. 8.

Request for Admission No. 9:

On September 15, 1976, John A. Woodward, III was appointed Inheritance Tax Referee by the Superior Court of the State of California for the County of Los Angeles for the purpose of appraising the Estate of Howard R. Hughes, Jr., and determining the amount of inheritance tax due the State of California.

Response to Request for Admission No. 9:

Defendant Cory admits Request No. 9.

Request for Admission No. 10:

John A. Woodward, III prepared a Report of Inheritance Tax Referee for the estate of Howard R. Hughes, Jr., and computed the total tax due the State of California upon a finding that Hughes was a domiciliary of the State of California and the County of Los Angeles at death, and included the intangible assets of the estate wherever located.

Response to Request for Admission No. 10:

Defendant Cory admits Request No. 10.

Request for Admission No. 11:

The aforesaid report of the Inheritance Tax Referee has not been filed with the Superior Court because such an action may directly or indirectly come within the proscribed terms of the temporary restraining order rendered by this Court on July 20, 1978.

Response to Request for Admission No. 11:

Defendant Cory admits Request No. 11, except insofar as it may be read to concede that the filing of the Inheritance Tax Referee's Report would directly or indirectly come within the proscribed terms of the Temporary Restraining Order rendered by this Court on July 20, 1978.

Request for Admission No. 12:

The aforesaid Report of Inheritance Tax Referee, when filed with the Superior Court, will serve to commence a proceeding on the issue of the domicile of Howard R. Hughes, Jr., at death.

Response to Request for Admission No. 12:

Defendant Cory admits that the filing of the Inheritance Tax Referee's Report would serve to commence a proceeding by which the California inheritance tax from the Estate of Howard R. Hughes would be fixed. No proceedings specifically on the issue of Hughes' domicile would occur unless Referee Woodward's

claim that Decedent died domiciled in California was controverted by an appropriate party pursuant to California Rev. & Tax Code §14510. Defendant Cory therefore denies the remaining portion of this request.

Request for Admission No. 13:

Since the death of Howard R. Hughes, Jr., Defendant Cory has refused to submit to the jurisdiction of the state courts of Texas or of any other state (except California) in a proceedings which purports to determine the domicile of Hughes at death.

Response to Request for Admission No. 13:

Since the death of Howard R. Hughes, Jr., only one state court has sought to assert jurisdiction over Defendant Cory. on May 5, 1976, Summa Corporation filed an action in the state courts of Delaware, naming Defendant Cory as a defendant. Defendant Cory did not appear in that action. Subsequently, Summa filed a First Amended Complaint in that action dropping Defendant Cory at a defendant therein. Since Defendant Cory did not "refuse to submit to the jurisdiction of the [Delaware] State Courts" but, instead, took no action with regard thereto and has never been asked to submit to the jurisdiction of any other state court, Defendant Cory denies this request for admission.

Request for Admission No. 14:

Defendant Cory claims that he, in his capacity as controller of the State of California, is not bound by the judgment entered on February 15, 1978 in Probate Court No. 2 of Harris County, Texas in Cause No. 139,362, concerning the domicile of Howard R. Hughes, Jr., at death.

Response to Request for Admission No. 14:

Defendant Cory admits Request No. 14.

Request for Admission No. 15:

Defendant Cory claims that the inheritance tax laws of California impose a liability for payment of the inheritance tax upon the heirs at law of a decedent. Therefore, Defendant Cory claims that if the tax cannot be collected from the Estate of Howard R. Hughes, Jr., then he has the right to proceed directly against the heirs at law and levy upon and collect the tax from their personal assets.

Response to Request for Admission No. 15:

Defendant Cory objects to this Request on the ground that it calls for his opinion as to a pure conclusion of law and not a matter of fact or an application of law to fact. The question of the Estate's inability to pay has not yet been presented in a concrete fashion. Therefore, no determination has yet been made by the controller of the circumstances in which he would seek to enforce, or might elect to refrain from enforcing, any such claim for personal liability, even if the same is authorized by law.

Request for Admission No. 16:

If the California courts make a determination that Howard R. Hughes, Jr., was domiciled at death in California, then California inheritance tax law, with respect to intangibles, will not provide for a credit, reduction or other recognition against California inheritance taxes for domicile-based inheritance taxes paid to any other State.

Response to Request for Admission No. 16:

Defendant Cory objects to this Request for Admission on the ground that it calls for a pure conclusion of law and not a matter of fact or an application of law to fact.

Request for Admission No. 17:

Unless restrained from doing so by this Court, Defendant Cory will continue to prosecute his claim to inheritance taxes on the In-

tangible assets of the Estate of Howard R. Hughes, Jr., based on his claim that Hughes was domiciled in California at the time of his death.

Response to Request for Admission No. 17:

Defendant Cory admits Request No. 17.

DATED: June 20, 1979.

JEROME B. FALK, JR.
STEVEN L. MAYER
HOWARD, PRIM, RICE, NEMEROVSKI, CANADY & POLLAK
A Professional Corporation
650 California Street
Suite 2900
San Francisco, California 94108

Of Counsel:
MYRON SIEDORF
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107 South Broadway
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Twelfth Floor
P.O. Box 1148
Austin, Texas 78767
By: DONALD S. THOMAS
Donald Scott Thomas
Attorneys for Defendants Cory and Alvord

[Certificate of Service Omitted in Printing]

Filed June 20, 1979

In the United States District Court
for the Western District of Texas
Austin Division

[Title Omitted in Printing]

RESPONSES BY DEFENDANT ALVORD TO PLAINTIFFS' REQUESTS FOR ADMISSION

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, Defendant H. B. Alvord, County Treasurer of the County of Los Angeles, hereby responds to the Requests for Admission previously served upon him by Plaintiffs.

Request for Admission No. 1:

Defendant Alvord is a citizen of California.

Response to Request for Admission No. 1:

Defendant Alvord admits Request No. 1 only insofar as he construes it to refer to his personal citizenship as an individual. The Request does not assert that Defendant Alvord is a citizen of California (a) for diversity purposes or (b) in his capacity as an official of the County of Los Angeles and, accordingly, Defendant Alvord neither admits nor denies these assertions.

Request for Admission No. 2:

Defendant Alvord is the duly elected, qualified, and acting County Treasurer for the County of Los Angeles and as such is charged with enforcing the inheritance tax laws of California in a valid, legal manner.

Response to Request for Admission No. 2:

Defendant Alvord admits that he is the duly elected, qualified and acting County Treasurer of the County of Los Angeles. He

objects to the remaining portion of this Request on the ground that it calls for a pure conclusion of law and not a matter of fact or an application of law to fact.

Request for Admission No. 3:

Defendant Alvord claims, and has claimed at all relevant times herein, that Decedent, Howard R. Hughes, Jr., was domiciled in California at death.

Response to Request for Admission No. 3:

Defendant Alvord denies Request No. 3. Defendant Alvord is not charged by law with the functions of asserting California's inheritance tax claims or ascertaining the domicile of decedents.

Request for Admission No. 4:

Defendant Alvord claims that Howard R. Hughes, Jr., could have only one domicile at death.

Response to Request for Admission No. 4:

Defendant Alvord denies Request No. 4. *See* his response to Request No. 3.

Request for Admission No. 5:

Defendant Alvord denies that Decedent, Howard R. Hughes, Jr., was domiciled in Nevada at death.

Response to Request for Admission No. 5:

Defendant Alvord denies Request No. 5. *See* his response to Request No. 3.

Request for Admission No. 6:

Defendant Alvord denies that Decedent, Howard R. Hughes, Jr., was domiciled in Texas at death.

Response to Request for Admission No. 6:

Defendant Alvord denies Request No. 6. *See* his response to Request No. 3.

Request for Admission No. 7:

Defendant Alvord claims that the intangible assets of the Estate of Howard R. Hughes, Jr., wherever located, are subject to inheritance taxation under the laws of California, because Hughes was domiciled within the State of California at death.

Response to Request for Admission No. 7:

Defendant Alvord denies Request No. 7. *See* his response to Request No. 3.

Request for Admission No. 8:

The administration of the Estate of Howard R. Hughes, Jr., is pending in the Superior Court of the State of California for the County of Los Angeles, being cause No. 621, 359.

Response to Request for Admission No. 8:

Defendant Alvord admits Request No. 8.

Request for Admission No. 9:

On September 15, 1976, John A. Woodward, III was appointed Inheritance Tax Referee by the Superior Court of the State of California for the County of Los Angeles for the purpose of appraising the Estate of Howard R. Hughes, Jr., and determining the amount of interitance tax due the State of California.

Response to Request for Admission No. 9:

Defendant Alvord admits Request No. 9.

Request for Admission No. 10:

John A. Woodward, III prepared a Report of Inheritance Tax Referee for the estate of Howard R. Hughes, Jr., and computed the total tax due the State of California upon a finding that Hughes was a domiciliary of the State of California and the County of Los Angeles at death, and included the intangible assets of the estate wherever located.

Response to Request for Admission No. 10:

Defendant Alvord admits Request No. 10.

Request for Admission No. 11:

The aforesaid report of the Inheritance Tax Referee has not been filed with the Superior Court because such an action may directly or indirectly come within the proscribed terms of the temporary restraining order rendered by this Court on July 20, 1978.

Response to Request for Admission No. 11:

Defendant Alvord admits Request No. 11, except insofar as it may be read to concede that the filing of the Inheritance Tax Referee's Report would directly or indirectly come within the proscribed terms of the Temporary Restraining Order rendered by this Court on July 20, 1978.

Request for Admission No. 12:

The aforesaid Report of Inheritance Tax Referee, when filed with the Superior Court, will serve to commence a proceeding on the issue of the domicile of Howard R. Hughes, Jr. at death.

Response to Request for Admission No. 12:

Defendant Alvord admits that the filing of the Inheritance Tax Referee's Report would serve to commence a proceeding by which the California inheritance tax from the Estate of Howard R. Hughes would be fixed and denies the remainder of this Request. No proceedings specifically on the issue of Hughes' domicile would occur unless Referee Woodward's claim that Decedent died domiciled in California was controverted by an appropriate party pursuant to California Rev. & Tax Code § 14510. Defendant Alvord therefore denies the remainder of this Request.

Request for Admission No. 13:

Since the death of Howard R. Hughes, Jr., Defendant Alvord has refused to submit to the jurisdiction of the state courts of Texas or of any other state (except California) in a proceeding which purports to determine the domicile of Hughes at death.

Response to Request for Admission No. 13:

Since the death of Howard R. Hughes, Jr., no state court has sought to assert jurisdiction over Defendant Alvord. Defendant Alvord therefore denies this Request for Admission.

Request for Admission No. 14:

Defendant Alvord claims that he, in his capacity as County Treasurer for the County of Los Angeles, is not bound by the judgment entered on February 15, 1978 in Probate Court No. 2 of Harris County, Texas in Cause No. 139,362, concerning the domicile of Howard R. Hughes, Jr. at death.

Response to Request for Admission No. 14:

Defendant Alvord admits Request No. 14.

Request for Admission No. 15:

Defendant Alvord claims that the inheritance tax laws of California impose a liability for payment of the inheritance tax upon the heirs at law of a decedent. Therefore, Defendant Alvord claims that if the tax cannot be collected from the Estate of Howard R. Hughes, Jr., then he has the right to proceed directly against the heirs at law and levy upon and collect the tax from their personal assets.

Response to Request for Admission No. 15:

Defendant Alvord objects to this Request on the ground that it calls for his opinion as to a pure conclusion of law and not a matter of fact or an application of law to fact.

Request for Admission No. 16:

If the California courts make a determination that Howard R. Hughes, Jr. was domiciled in death in California, then California inheritance tax law, with respect to intangibles, will not provide for a credit, reduction or other recognition against California inheritance taxes for domiciled-based inheritance taxes paid to any other State.

Response to Request for Admission No. 16:

Defendant Alvord objects to this Request for Admission on the ground that it calls for a pure conclusion of law and not a matter of fact or an application of law to fact.

Request for Admission No. 17:

Unless restrained from doing so by this Court, Defendant Alvord will continue to prosecute his claim to inheritance taxes on the intangible assets of the Estate of Howard R. Hughes, Jr., based on his claim that Hughes was domiciled in California at the time of his death.

Response to Request for Admission No. 17:

Defendant Alvord denies Request No. 17. *See* his response to Request No. 3.

DATED: June 20, 1979.

JEROME B. FALK, JR.
STEVEN L. MAYER
HOWARD, PRIM, RICE, NEMEROVSKI, CANADY & POLLAK
A Professional Corporation
650 California Street
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By: DONALD S. THOMAS
Donald Scott Thomas
Attorneys for Defendants Cory and Alvord

Of Counsel:

MYRON SIEDORF
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Assistant Inheritance Tax Attorneys
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107 South Broadway
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[Certificate of Service Omitted in Printing]

Filed July 9, 1979

In the United States District Court
For the Western District of Texas
Austin Division
[Title Omitted in Printing]

ANSWER OF WILLIAM RICE LUMMIS AND FIRST NATIONAL BANK OF NEVADA, NEVADA CO-SPECIAL ADMINISTRATORS OF THE ESTATE OF HOWARD R. HUGHES, JR., DECEASED.

COMES NOW William Rice Lummis and First National Bank of Nevada, Nevada Co-Special Administrators of the Estate of Howard R. Hughes, Jr., Deceased, named as defendants in the above captioned action and make and file this Answer to the Plaintiffs' First Amended Complaint for Interpleader.

ANSWER TO COMPLAINT FOR INTERPLEADER

1. Answering Paragraph No. 1 of Plaintiffs' Complaint:
   Admitted
2. Answering Paragraph No. 2:
   Admitted
3. Answering Paragraph No. 3:
   Admitted
4. Answering Paragraph No. 4:
   Admitted
5. Answering Paragraph No. 5:
   Admitted
6. Answering Paragraph No. 6:
   Admitted
7. Answering Paragraph No. 7:
   Admitted
8. Answering Paragraph No. 8:
   Admitted
9. Answering Paragraph No. 9:
   Admitted

10. Answering Paragraph No. 10:
Admitted

11. Answering Paragraph No. 11:
Admitted

12. Answering Paragraph No. 12:
Admitted

13. Answering Paragraph No. 13:
Admitted

14. Answering Paragraph No. 14:
Admitted

15(a)(i) Answering Paragraph No. 15(a)(i):
Admitted

15(a)(ii) Answering Paragraph No. 15(a)(ii):
Admitted
The Nevada Co-Special Administrators at all relevant times herein have asserted and continue to assert that Howard R. Hughes, Jr. ("Decedent"), was domiciled in Nevada at death. A duty is therefore imposed upon all other administrators after paying just debts, to remit all of the intangible assets of the Estate to the Nevada Co-Special Administrators.

15(a)(iii) Answering Paragraph No. 15(a)(iii):
Admitted

15(b) Answering Paragraph No. 15(b):
Admitted

15(c) Answering Paragraph No. 15(c):
Admitted

16. Answering Paragraph No. 16:
Admitted

17. Answering Paragraph No. 17:
Admitted

18. Answering Paragraph No. 18: Admitted
19. Answering Paragraph No. 19: Admitted
20. Answering Paragraph No. 20: Admitted
21. Answering Paragraph No. 21: Admitted
22. Answering Paragraph No. 22: Admitted

23(a) Answering Paragraph No. 23(a): Admitted

23(b) Answering Paragraph No. 23(b): Admitted

24. Answering Paragraph No. 24: Admitted
25. Answering Paragraph No. 25: Admitted
26. Answering Paragraph No. 26: Admitted
27. Answering Paragraph No. 27: Admitted
28. Answering Paragraph No. 28: Admitted
29. Answering Paragraph No. 29: Admitted
30. Answering Paragraph No. 30: Admitted
31. Answering Paragraph No. 31: Admitted
32. Answering Paragraph No. 32: Admitted

33. Answering Paragraph No. 33:
Admitted
34. Answering Paragraph No. 34:
Admitted
35. Answering Paragraph No. 35:
Admitted
36. Answering Paragraph No. 36:
Admitted

Further, the Nevada Co-Special Administrators pledge and assert that they will abide by a judgment of this Court in this action.

37. Answering Paragraph No. 37:
Admitted
38. Answering Paragraph No. 38:
Admitted
39. Answering Paragraph No. 39:
Admitted
40. Answering Paragraph No. 40:
Admitted
41. Answering Paragraph No. 41:
Admitted
42. Answering Paragraph No. 42:
Admitted
43. Answering Paragraph No. 43:
Admitted
44. Answering Paragraph No. 44:
Admitted
45. Answering Paragraph No. 45:
Admitted
46. Answering Paragraph No. 46:
Admitted
47. Answering Paragraph No. 47:
Admitted

WHEREFORE, PREMISES CONSIDERED, Defendants, William Rice Lummis and First National Bank of Nevada, Nevada Co-Special Administrators of the Estate of Howard R. Hughes, Jr., Deceased, pray that this Court:

1. Adjudge and declare that Decedent was domiciled in Nevada, and therefore not in any other jurisdiction, at the time of his death, and that all parties to this action abide by that declaration.
2. In the alternative, should the Court determine that Decedent was domiciled in a jurisdiction other than Nevada, then adjudge and declare in which other jurisdiction Decedent was domiciled at the time of his death and further adjudge and declare that he was domiciled only in that jurisdiction at the time of his death and that all parties to this action abide by that declaration.
3. Grant Defendants, William Rice Lummis and First National Bank of Nevada, Nevada Co-Special Administrators of the Estate of Howard R. Hughes, Jr., Deceased, all other and further relief to which entitlement is shown.

Respectfully submitted,

BROWN, MARONEY, ROSE, BAKER & BARBER
1300 American Bank Tower
Austin, Texas 78701

By CHARLIE D. DYE
Attorney of Record for Defendants
William Rice Lummis and
First National Bank of Nevada

[Certificate of Service Omitted in Printing]

Filed July 9, 1979

In the United States District Court
for the Western District of Texas
Austin Division

[Title Omitted in Printing]

ANSWER OF WILLIAM RICE LUMMIS, LOUISIANA PROVISIONAL ADMINISTRATOR OF THE ESTATE OF HOWARD R. HUGHES, JR., DECEASED

COMES NOW William Rice Lummis, Louisiana Provisional Administrator of the Estate of Howard R. Hughes, Jr., Deceased, named as defendant in the above captioned action, and makes and files this Answer to the Plaintiffs' First Amended Complaint for Interpleader.

ANSWER TO COMPLAINT FOR INTERPLEADER

1. Answering Paragraph No. 1 of Plaintiffs' Complaint:
   Admitted
2. Answering Paragraph No. 2:
   Admitted
3. Answering Paragraph No. 3:
   Admitted
4. Answering Paragraph No. 4:
   Admitted
5. Answering Paragraph No. 5:
   Admitted
6. Answering Paragraph No. 6:
   Admitted
7. Answering Paragraph No. 7:
   Admitted
8. Answering Paragraph No. 8:
   Admitted
9. Answering Paragraph No. 9:
   Admitted

10. Answering Paragraph No. 10:
Admitted

11. Answering Paragraph No. 11:
Admitted

12. Answering Paragraph No. 12:
Admitted

13. Answering Paragraph No. 13:
Admitted

14. Answering Paragraph No. 14:
Admitted

15(a)(i) Answering Paragraph No. 15(a)(i):
Admitted

15(a)(ii) Answering Paragraph No. 15(a)(ii):
Admitted
The Louisiana Provisional Administrator at all relevant times herein has asserted and continues to assert that Howard R. Hughes, Jr., ("Decedent"), was domiciled in Nevada at death.

15(a)(iii) Answering Paragraph 15(a)(iii):
Admitted

15(b) Answering Paragraph No. 15(b):
Admitted

15(c) Answering Paragraph No. 15(c):
Admitted

16. Answering Paragraph No. 16:
Admitted

17. Answering Paragraph No. 17:
Admitted

18. Answering Paragraph No. 18:
Admitted

19. Answering Paragraph No. 19:
Admitted

20. Answering Paragraph No. 20:
Admitted
21. Answering Paragraph No. 21:
Admitted
22. Answering Paragraph No. 22:
Admitted
23(a) Answering Paragraph No. 23(a):
Admitted
23(b) Answering Paragraph No. 23(b):
Admitted
24. Answering Paragraph No. 24:
Admitted
25. Answering Paragraph No. 25:
Admitted
26. Answering Paragraph No. 26:
Admitted
27. Answering Paragraph No. 27:
Admitted
28. Answering Paragraph No. 28:
Admitted
29. Answering Paragraph No. 29:
Admitted
30. Answering Paragraph No. 30:
Admitted
31. Answering Paragraph No. 31:
Admitted
32. Answering Paragraph No. 32:
Admitted
33. Answering Paragraph No. 33:
Admitted
34. Answering Paragraph No. 34:
Admitted

35. Answering Paragraph No. 35:
Admitted

36. Answering Paragraph No. 36:
Admitted

Further, the Louisiana Provisional Administrator pledges and asserts that he will abide by a judgment of this court in this action.

37. Answering Paragraph No. 37:
Admitted

38. Answering Paragraph No. 38:
Admitted

39. Answering Paragraph No. 39:
Admitted

40. Answering Paragraph No. 40:
Admitted

41. Answering Paragraph No. 41:
Admitted

42. Answering Paragraph No. 42:
Admitted

43. Answering Paragraph No. 43:
Admitted

44. Answering Paragraph No. 43:
Admitted

45. Answering Paragraph No. 45:
Admitted

46. Answering Paragraph 46:
Admitted

47. Answering Paragraph No. 47:
Admitted

WHEREFORE, PREMISES CONSIDERED, Defendant, William Rice Lummis, Louisiana Provisional Administrator of the Estate of Howard R. Hughes, Jr., Deceased, prays that this Court:

1. Adjudge and declare that Decedent was domiciled in Nevada, and therefore not in any other jurisdiction, at the time of his death, and that all parties to this action abide by that declaration.
2. In the alternative, should the Court determine that Decedent was domiciled in a jurisdiction other than Nevada, then adjudge and declare in which other jurisdiction Decedent was domiciled at the time of his death and further adjudge and declare that he was domiciled only in that jurisdiction at the time of his death and that all parties to this action abide by that declaration.
3. Grant Defendant William Rice Lummis, Louisiana Provisional Administrator of the Estate of Howard R. Hughes, Jr., Deceased, all other and further relief to which entitlement is shown.

Respectfully submitted,

BROWN, MARONEY, ROSE, BAKER & BARBER
1300 AmericanBank Tower
Austin, Texas 78701

By CHARLIE D. DYE
Attorney of Record for
Defendant William Rice Lummis

[Certificate of Service Omitted in Printing]

Filed July 9, 1979

In the United States District Court
for the Western District of Texas
Austin Division

[Title Omitted in Printing]

ANSWER OF WILLIAM RICE LUMMIS, DELAWARE ANCILLARY ADMINISTRATOR OF THE ESTATE OF HOWARD R. HUGHES, JR., DECEASED

COMES NOW William Rice Lummis, Delaware Ancillary Administrator of the Estate of Howard R. Hughes, Jr., Deceased, named as defendant in the above captioned action and makes and files this Answer to the Plaintiffs' First Amended Complaint for Interpleader.

ANSWER TO COMPLAINT FOR INTERPLEADER

1. Answering Paragraph No. 1 of Plaintiffs' Complaint:
   Admitted
2. Answering Paragraph No. 2:
   Admitted
3. Answering Paragraph No. 3:
   Admitted
4. Answering Paragraph No. 4:
   Admitted
5. Answering Paragraph No. 5:
   Admitted
6. Answering Paragraph No. 6:
   Admitted
7. Answering Paragraph No. 7:
   Admitted
8. Answering Paragraph No. 8:
   Admitted
9. Answering Paragraph No. 9:
   Admitted

10. Answering Paragraph No. 10:
Admitted
11. Answering Paragraph No. 11:
Admitted
12. Answering Paragraph No. 12:
Admitted
13. Answering Paragraph No. 13:
Admitted
14. Answering Paragraph No. 14:
Admitted

15(a)(i) Answering Paragraph No. 15 (a)(i):
Admitted

15(a)(ii) Answering Paragraph No. 15(a)(ii):
Admitted

The Delaware Ancillary Administrator at all relevant times herein has asserted and continues to assert that Howard R. Hughes, Jr. ("Decedent") was domiciled in Nevada at death.

15(a)(iii) Answering Paragraph No. 15(a)(iii):
Admitted

15(b) Answering Paragraph No. 15(b):
Admitted

15(c) Answering Paragraph No. 15(c):
Admitted

16. Answering Paragraph No. 16:
Admitted
17. Answering Paragraph No. 17:
Admitted
18. Answering Paragraph No. 18:
Admitted
19. Answering Paragraph No. 19:
Admitted
20. Answering Paragraph No. 20:
Admitted

21. Answering Paragraph No. 21:
Admitted

22. Answering Paragraph No. 22:
Admitted

23(a) Answering Paragraph No. 23(a):
Admitted

23(b) Answering Paragraph 23(b):
Admitted

24. Answering Paragraph No. 24:
Admitted

25. Answering Paragraph No. 25:
Admitted

26. Answering Paragraph No. 26:
Admitted

27. Answering Paragraph No. 27:
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28. Answering Paragraph No. 28:
Admitted

29. Answering Paragraph No. 29:
Admitted

30. Answering Paragraph No. 30:
Admitted

31. Answering Paragraph No. 31:
Admitted

32. Answering Paragraph No. 32:
Admitted

33. Answering Paragraph No. 33:
Admitted

34. Answering Paragraph No. 34:
Admitted

35. Answering Paragraph No. 35:
Admitted

36. Answering Paragraph No. 36:
Admitted

    Further, the Delaware Ancillary Administrator pledges and asserts that he will abide by a judgment of the court in this action.

37. Answering Paragraph No. 37:
Admitted
38. Answering Paragraph No. 38:
Admitted
39. Answering Paragraph No. 39:
Admitted
40. Answering Paragraph No. 40:
Admitted
41. Answering Paragraph No. 41:
Admitted
42. Answering Paragraph No. 42.:
Admitted
43. Answering Paragraph No. 43:
Admitted
44. Answering Paragraph No. 44:
Admitted
45. Answering Paragraph No. 45:
Admitted

    In the face of conflicting state court judgments the Delaware Administrator cannot comply with the Delaware statutory requirement of obtaining a final accounting and transferring ownership of the intangible assets to the domiciliary administrator.

46. Answering Paragraph No. 46:
Admitted
47. Answering Paragraph No. 47:
Admitted

WHEREFORE, PREMISES CONSIDERED, Defendant William Rice Lummis, Delaware Ancillary Administrator of the Estate of Howard R. Hughes, Jr., Deceased, prays that this Court:

1. Adjudge and declare that the Decedent was domiciled in Nevada, and therefore not in any other jurisdiction, at the time of his death, and that all parties to this action abide by that decision.
2. In the alternative, should the Court determine that Decedent was domiciled in a jurisdiction other than Nevada, then adjudge and declare in which other jurisdiction Decedent was domiciled at the time of his death and further adjudge and declare that he was domiciled only in that jurisdiction at the time of his death and that all parties to this action abide by that declaration.
3. Grant Defendant William Rice Lummis, Delaware Ancillary Administrator of the Estate of Howard R. Hughes, Jr., Deceased, all other and further relief to which entitlement is shown.

Respectfully submitted,

BROWN, MARONEY, ROSE, BAKER & BARBER
1300 AmericanBank Tower
Austin, Texas 78701

By CHARLIE D. DYE
Charlie D. Dye
Attorney of Record for
Defendant William Rice
Lummis

[Certificate of Service Omitted in Printing]

Filed July 10, 1979

In the United States District Court
For the Western District of Texas
Austin Division

[Title Omitted in Printing]

ANSWER OF RICHARD GANO, CALIFORNIA GENERAL ADMINISTRATOR OF THE ESTATE OF HOWARD R. HUGHES, JR., DECEASED

COMES NOW Richard Gano, California General Administrator of the Estate of Howard R. Hughes, Jr., Deceased, named as a defendant in the above captioned action and makes and files this Answer to the Plaintiffs' First Amended Complaint for Interpleader.

ANSWER TO COMPLAINT FOR INTERPLEADER

1. Answering Paragraph No. 1 of Plaintiffs' Complaint: Admitted
2. Answering Paragraph No. 2: Admitted
3. Answering Paragraph No. 3: Admitted
4. Answering Paragraph No. 4: Admitted
5. Answering Paragraph No. 5: Admitted
6. Answering Paragraph No. 6: Admitted
7. Answering Paragraph No. 7: Admitted
8. Answering Paragraph No. 8: Admitted

9. Answering Paragraph No. 9:
Admitted

10. Answering Paragraph No. 10:
Admitted

11. Answering Paragraph No. 11:
Admitted

12. Answering Paragraph No. 12:
Admitted

13. Answering Paragraph No. 13:
Admitted

14. Answering Paragraph No. 14:
Admitted

15(a)(i) Answering Paragraph No. 15 (a)(i):
Admitted

15(a)(ii) Answering Paragraph No. 15(a)(ii):
Admitted
The California General Administrator at all relevant times herein has asserted and continues to assert that Howard R. Hughes, Jr. ("Decedent") was domiciled in Nevada at death.

15(a)(iii) Answering Paragraph No. 15(a)(iii):
Admitted

15(b) Answering Paragraph No. 15(b):
Admitted

15(c) Answering Paragraph No. 15(c):
Admitted

16. Answering Paragraph No. 16:
Admitted

17. Answering Paragraph No. 17:
Admitted

18. Answering Paragraph No. 18:
Admitted

19. Answering Paragraph No. 19:
Admitted

20. Answering Paragraph No. 20:
Admitted
21. Answering Paragraph No. 21:
Admitted
22. Answering Paragraph No. 22:
Admitted
23(a) Answering Paragraph No. 23(a):
Admitted
23(b) Answering Paragraph 23(b):
Admitted
24. Answering Paragraph No. 24:
Admitted
25. Answering Paragraph No. 25:
Admitted
26. Answering Paragraph No. 26:
Admitted
27. Answering Paragraph No. 27:
Admitted
28. Answering Paragraph No. 28:
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29. Answering Paragraph No. 29:
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30. Answering Paragraph No. 30:
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31. Answering Paragraph No. 31:
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32. Answering Paragraph No. 32:
Admitted
33. Answering Paragraph No. 33:
Admitted
34. Answering Paragraph No. 34:
Admitted
35. Answering Paragraph No. 35:
Admitted

36. Answering Paragraph No. 36:
Admitted

    Further, the California General Administrator pledges and asserts that he will abide by a judgment of this court in this action.

37. Answering Paragraph No. 37:
Admitted
38. Answering Paragraph No. 38:
Admitted
39. Answering Paragraph No. 39:
Admitted
40. Answering Paragraph No. 40:
Admitted
41. Answering Paragraph No. 41:
Admitted
42. Answering Paragraph No. 42.:
Admitted
43. Answering Paragraph No. 43:
Admitted
44. Answering Paragraph No. 44:
Admitted
45. Answering Paragraph No. 45:
Admitted
46. Answering Paragraph No. 46:
Admitted
47. Answering Paragraph No. 47:
Admitted

WHEREFORE, PREMISES CONSIDERED, Defendant Richard Gano, California General Administrator of the Estate of Howard R. Hughes, Jr., Deceased, prays that this Court:

1. Adjudge and declare that Decedent was domiciled in Nevada, and therefore not in any other jurisdiction, at the time of his death, and that all parties to this action abide by that declaration.
2. In the alternative, should the Court determine that Decedent was domiciled in a jurisdiction other than Nevada, then adjudge and declare in which other jurisdiction Decedent was domiciled at the time of his death and further adjudge and declare that he was domiciled only in that jurisdiction at the time of his death and that all parties to this action abide by that declaration.
3. Grant Defendant Richard Gano, California General Administrator of the Estate of Howard R. Hughes, Jr., Deceased, all other and further relief to which entitlement is shown.

Respectfully submitted,

RONALD GOTHER
GIBSON, DUNN & CRUTCHER
515 South Flower Street
Los Angeles, California 90071

BROWN, MARONEY, ROSE, BAKER & BARBER
1300 American Bank Tower
Austin, Texas 78701

By CHARLIE D. DYE
Charlie D. Dye
Attorneys of Record for Defendant Richard Gano

Testimony of William Rice Lummis at the hearing on Defendants' Motions to Dismiss and Plaintiffs' Motion In Preliminary Injunction, July 10, 1979.

[7] WILLIAM LUMMIS,

having been called as a witness by the Plaintiffs, and [8] having been by the Court first duly sworn, testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. LILIENSTERN:

Q What is your name and full address, Mr. Lummis?

A William R. Lummis. My address is 4045 South Spencer, Las Vegas, Nevada.

Q Mr. Lummis, in what capacities do you represent or are you serving as a personal representative of the Howard Hughes estate?

A I serve as temporary co-administrator of the Hughes estate in Texas, as co-special administrator of the estate of Nevada, as ancillary administrator of the estate of Delaware and as provisional administrator of the estate of Louisiana.

Q And who is Mrs. Annette Gano Lummis who is another Texas co-administrator who is also a plaintiff in this action?

A She is my Mother.

Q What was Mrs. Lummis' relationship to Howard Hughes, the decedent?

A My Mother was Mr. Hughes' aunt.

Q Did Mr. Hughes, at the time of his death, have any children or brothers or sisters living?

A No, he did not.

Q Were there any other uncles or aunts other than your [9] mother?

A None survived him.

Q None survived him. Would you describe for the Court, Mr. Lummis, the nature of the intangible assets which are the subject of this action, this interpleader action, which we've brought in this federal district court?

A The intangible assets of the Hughes estate comprise, I would estimate, approximately 99 percent of the estate and they consist principally of all of the stock of the Summa Corporation, which is a Delaware corporation, all of the stock of Hughes Properties, Inc., which was formerly Hughes Television Network, Inc., which is a Nevada corporation. And the other principal intangible asset would be the 22 percent interest which Mr. Hughes held individually in Hughes Air Corp, which is known as Hughes Airwest, the airline.

Q Who owns the other 78 percent of Hughes Air Corp?

A Summa Corporation.

Q What, if any, of these intangible assets are located within the State of Texas?

A Located within Texas is the stock of Hughes Properties, Inc. and the 22 percent of the stock held by Mr. Hughes individually at the time of his death.

Q All right. Where does your mother reside? In what state?

A In Texas.

[10] Q Do you know Richard Gano, the California General administrator of the estate?

A I do.

Q In what state does he reside?

A He resides in California.

Q You have a co-special administrator in the State of Nevada; do you not?

A Yes.

Q What entity is that?

A First National Bank of Nevada.

Q Whose principal place of business is where?

A Reno.

Q Reno, Nevada?

A Yes.

Q You're familiar, are you not, Mr. Lummis, with the domicile trial, the domicile case, which was tried in Probate Court Number Two of Harris County, Texas, during the latter part of 1977 and early 1978?

A I am indeed.

Q You were a party to that action, were you not?

A Yes.

Q To your knowledge, was Mr. Cory or Mr. Alvord, as we've come to call them, the California Defendants; were either of those gentlemen parties to that action?

A They were not.

[11] Q Are you familiar with an appearance made by Mr. Bullock in the State of Delaware in the proceeding there?

A Yes.

Q To your knowledge, did Mr. Cory or Mr. Alvord make appearances in that proceeding?

A To my knowledge, they did not.

Q What is that proceeding, Mr. Lummis, the action pending in Delaware?

A The action pending in Delaware was an interpleader action filed by Summa Corporation to—or requesting the Court to identify the person they should look to as the shareholder of Summa Corporation pending a final determination of the administration of the estate entitled to administer the Summa stock.

Q And what determination did the Court make as an interim measure as to the shareholder of Summa Corporation?

A The Court issued an order instructing Summa Corporation to recognize as its sole shareholder the Delaware ancillary administrator for purposes of administering the Summa shares.

Q All right. Are you familiar with the probate proceedings in the State of Nevada?

A Yes.

Q To your knowledge, has the State of Texas, by and through its then Attorney General John Hill, made an [12] appearance in that proceedings [sic]?

A Yes.

Q To your knowledge, have either Mr. Cory or Mr. Alvord made appearances in the Nevada proceedings, probate proceedings?

A To my knowledge, they have not.

Q Is the issue of domicile still pending in both Delaware and Nevada?

A Yes.

Q There had been no determination by either of those Courts concerning Mr. Hughes' domicile at death?

A There has not been.

Q Have you put together some cost figures concerning the fee for services paid to attorneys including out-of-pocket expenses for the cost of the pretrial and trial of the domicile case in Probate Court Number Two of Harris County, Texas?

A Yes, I have some approximate figures.

Q What are those figures, Mr. Lummis?

A The legal fees and expenses incurred by the estate in connection with the Texas domicile trial approximated $1,700,000.00.

Q In your capacity as Delaware administrator, what—what action would you take in the face of conflicting domicile determinations by other state courts? What would be your posture when presented with a judgment, say, from Texas, [13] California and Nevada, some of which may not all recognize the same state of domicile?

A Well, the Delaware administrator would have to seek, I assume in Delaware, a determination of Hughes' domicile independent of the findings in the other states.

Q And, Mr. Lummis, have all of the administrators of the various proceedings in which administrations have been opened with respect to the estate, entered appearances in this action?

A They have.

Q Finally, Mr. Lummis, have you, at our request, computed various tax figures based upon information which you have been provided as administrator of the estate?

A Yes. I have prepared what I would describe as my best estimation as an administrator as to what various tax results would be.

Q All right. Would you tell us what jurisdictions you're dealing with in making your computations?

A Well, my computations were made to determine what the overall tax liability of the Hughes estate might be if it came to pass that both Texas and California were able to assert independently inheritance taxes against the Hughes estate.

Q All right. Have you been provided figures—or has the State been provided figures by the Internal Revenue [14] Service concerning its valuation of the gross estate?

A I've been informed as to its provisional number.

Q Yes, sir.

A Yes, sir.

Q And what is that number, Mr. Lummis?

A $465,000,000.00 is the number the Internal Revenue Service has determined to be the value of the Hughes gross estate at the valuation date, which was October 5, 1976.

Q All right. I know that you have some written computations and I suggest perhaps—Do you have those at the stand with you?

A Yes.

Q Okay. You might want to refer to those as I ask you some of these questions. Have you made a computation concerning the value of the net taxable estate, that is, deducting expenses of the administration and other allowable deductions from that federal gross estate tax figure?

A Yes.

Q And what is that figure of the taxable estate?

A I have assumed throughout that there would be allowed as deductions for known debts and clearly identified deductions of the estate, $77,000,000.00, which yields a taxable estate of approximately $388,000,000.00.

Q All right. Mr. Lummis, we provided the Court with an instrument which is captioned, a Notice of Judicial [15] Notice and for Application of Law. But let me ask you to assume, if you would, sir, that the federal tax rate in 1976 was approximately 77 percent. For purposes of your computations, is that the figure you used?

A Yes.

Q And applying that to the taxable estate, what is the amount of net tax due the federal government based upon their assessed [16] valuation?

A The gross tax due based on 77 percent rate would be $321,000,000.00, approximately. But the administrators have claimed, in the federal estate tax return, a credit for whatever state death tax might be paid, the maximum credit or 16 percent, and assuming that a state death tax credit would be allowable against the federal estate tax, I have arrived at a net federal estate tax of approximately $254,300,000.00.

Q And does that include certain interest which would have to be paid on the net amount of the tax due?

A Yes, it does.

Q Calculated at what rate?

A Calculated at a waive [sic] average of 7 percent over a six-year period.

Q All right. Now, in making your computations—We have no figures from the Texas Comptroller's Office; is that correct? That is, they have not provided us with their valuation?

A That's correct.

Q Did you, in making your computations, assume a figure equal to the federal assessed valuation in computing the Texas tax due?

A Yes. I had to assume some value. And I assume the State of Texas would, for the purposes of these computations, would abide by the valuation of the Internal Revenue Service.

Q All right. And what amount of taxes due the State of Texas, based upon its tax rate, did you arrive at?

A I arrived at a tax, principal tax of $62,000,000.00, approximately. And a total tax applying to deferred payment scheduled at the rate of six percent, which is provided by the Texas Statutes over a six-year period of deferred payment, arrived at interest charges of some $22,300,000.00, or a total payment to the State of Texas with respect to the inheritance tax of some $84,300,000.00.

Q All right. And you've examined the inheritance tax referee's report which has been admitted as an exhibit and

was previously filed as an attachment to an affidavit in this action, have you not?

A The California—

Q Yes, sir.

A Yes, I have.

[17] Q And have you made certain computations with respect to the inheritance tax referee's assessed valuation of the estate?

A Yes, I have.

Q And what amount of taxes did you compute as due and owing, accepting his figures and applying the 24 percent, approximately 24 percent tax rate did you arrive at?

A Well, the inheritance tax referee of California, his report indicated that he would assert the value of the Hughes estate to be, the gross value of the estate to be $1,106,345,516.00. His report indicated no reductions. It's simply related to the gross value of the estates. I have assumed, once again, the administrators would be able to sustain deductions of some $77,000,000.00, so my numbers are based on a taxable, an assumed taxable estate of the California of a $1,029,000,000.00, in round numbers.

Q All right.

A The tax rate in California is 24 percent. I've used that number to arrive at a principal tax of $247,000,000.00. The interest rate charged in California for past-due taxes is 12 percent per annum. And again, being consistent with my earlier computations over a six-year period, that number comes to a $177,800,000.00. So, the total payments that would be due California, under the assumptions that I have made in arriving at my working numbers, those total—that total obligation would be $424,800,000.00.

[18] Q All right. And again, your computations accepted for purposes of your computations the assessed values placed on the estate by the Internal Revenue Service[,] an assumption that Texas would abide by that same computation and the California inheritance tax referee's figure?

A That is correct.

Q As representative of the estate, do you agree or disagree with those valuations by the IRS and the inheritance tax referee?

A Well, I would certainly disagree strenuously with the—with both valuations. The administrators determine the Hughes estate to have a gross value of a $166,800,000.00, somewhat less than either the valuations placed upon the estate by the Internal Revenue Service and much less than that placed or indicated by the inheritance tax referee of California.

Q All right. Finally, in your computations have you totaled those showing the total amount of tax due and owing by the estate?

A Yes. Again, to arrive at what a working number might be, to define the extent of the problem that might confront the administrators if both Texas and California did assert, were able and permitted to assert their inheritance tax, the total tax liability of the estate, death tax liability of the estate, to say nothing of the taxes that might be [19] incurred in attempting to raise those sums, but the death tax liability alone would be $763,400,000.00.

Q As compared, again, to a gross estate value by the Internal Revenue Service of what amount?

A Of $465,000,000.00 and a gross estate value of administrators of a $166,800,000.00.

Q Thank you, Mr. Lummis.

MR. LILIENSTERN: I pass the witness, your Honor.

CROSS EXAMINATION

QUESTIONS BY MR. MAYER:

Q Mr. Lummis, have you made similar calculations for what the California taxes would be if the California inheritance tax referee had valued the estate at the same amount that the IRS values the estate at?

A No.

Q No?

A I had no reason to assume that the California inheritance tax referee on the basis of the number that I sought would be interested in adopting the numbers of the Internal Revenue Service.

Q The issue of valuation of California is, of course, subject to judicial determination; is it not?

A It's my understanding, yes.

Q Mr. Lummis, I want to read to you, if I may, a statement [20] from the Plaintiffs' memorandum in opposition to our motion to dismiss, which refers to, quote, the fact that the defendant administrators and the plaintiff administrators are acting in unison toward a common goal; is that a correct statement?

MR. LILIENSTERN: May we have a citation, Counsel?

MR. MAYER: Yes, it's page 27, and there are no lines, but it's the first two lines of the second full paragraph on that page.

Q (By Mr. Mayer) Do you want me to read that again?

A Please do.

Q Okay. I'll read the whole sentence just for purposes of clarity. "By the same token, the fact that the defendant administrators and the plaintiff administrators are acting in unison toward a common goal does not negate the adversity between their claims and those of the defendant taxing officials." My question is: Is it correct that the defendant administrators and the plaintiff administrators are working—Pardon.—are acting in unison toward a common goal?

A That is correct.

Q At whose direction are the various administrators acting under?

A The administrators are—have reached their own decisions.

[21] Q How can they therefore be acting in unison? Would not someone have to stake out a course for all the administrators to follow?

A Well, all of the administrators have jointly arrived at the conclusion that that would be very beneficial to this

estate were we able to have a unitary determination of the domicile of Mr. Hughes. And certainly to that extent the administrators are acting in unison toward a common goal if that's—

Q Can you—Are there any examples you can think of where the various administrators have not been acting in unison and have taken opposing positions?

A No, they have not. They have attempted to work together in effecting an orderly administration of a fairly disorderly estate.

Q And who is the central decision maker between the various administrators?

A The administrators have all indicated earlier to make up their own minds about these matters. I assume that you could say that I am the principal administrator of the estate.

Q Is there any occasion on which the California special administrator has taken a position that differs from the position that you have taken in your capacity as administrator in the other jurisdictions?

[22] A No. On the other hand, I certainly do not presume to instruct the California administrator in any way.

Q Do you recall when the Texas estate was opened, Mr. Lummis?

A Yes, I do. April 14, 1976.

Q And when was the Nevada estate opened?

A April 14, 1976.

Q And the California estate?

A April 14, 1976.

Q Was that all done as part of a unified scheme of administration?

A Yes, it was a unified plan to open an administration of the estate of Mr. Hughes.

Q And who originated that plan?

A My mother and I and our attorney and the attorneys for Summa Corporation and other people interested in the orderly administration of the Hughes estate.

Q Do you know whether the California administrator has taken any position regarding the administration of that estate without checking with you and your attorney?

A No. I believe that in the actions that the California administrator takes, he, as a matter of information and as a matter of coordinating this information, informs me and my attorneys of the proposed action to be taken. I, likewise, inform him of actions that I taken [sic] in my administrations which I serve.

[23] Q Where—When did you become aware, Mr. Lummis, that California might have a tax claim against the Hughes estate?

A I don't recall.

Q Would—If I suggested to you that it was in the latter—it was in October or September, 1977, would that refresh your recollection?

A I really don't recall, but I wouldn't quarrel with that.

Q Do you—Do you recall whether California had expressed an interest in taxing the Hughes estate before the Texas domicile trial started in Houston?

A Yes, they did.

Q To your knowledge, were any of the constitutional claims that the estate has now raised in its complaint, that the plaintiffs now raise in their complaint, raised in the Texas State Court?

A I don't know. There are many pleadings, you understand, filed in my behalf that I'm not—I don't recall the specifics of.

Q Are you aware that the heirs have entered into a series of settlement agreements, or persons that claim to be heirs have entered into a series of settlement agreements?

A Yes.

Q And do those settlement agreements divide up the estate regardless of which jurisdiction is ultimately found to [24] be the domicile?

A They purport to do that on the assumption and only in the event that Mr. Hughes died intestate.

Q And is it not correct that those agreements also provide that if one of the heirs pays a disproportionate share of the tax that he or she may obtain reimbursement from the other heirs?

A I don't recall. I have not looked at those agreements for eighteen months or more.

MR. MAYER: Why don't I pass the witness while I refer to the appropriate paragraph?

CROSS EXAMINATION

QUESTIONS BY MR. HARRISON:

MR. HARRISON: Your Honor, if I may, because it will be in aid of my cross examination of Mr. Lummis, I would like at this time to offer into evidence a series of documents that have been marked T-1 through T-5, and they—There is a joint motion by all parties here to approve these documents and to the effect that they may be offered into evidence. And I offer them into evidence at this time.

MR. GEORGE: No objection, your Honor.

MR. MAYER: No objection.

THE COURT: They are admitted.

(Whereupon, at this time, [25] Exhibits T-1 through T-5 were admitted into evidence.)

MR. HARRISON: May I proceed, your Honor?

Q (By Mr. Harrison) Mr. Lummis, you are also a licensed attorney, are you not?

A Yes, I am.

Q In what states?

A Texas.

Q All right, sir. When you were asked on direct examination about appearances made by Mr. Bullock or by the Attorney General of Texas in respective states of Delaware and Nevada, you didn't mean by your testimony, did you, to ascribe any legal significance to the term, appearance, did you?

A Well, I simply meant to—what I stated. And that is my understanding. That they filed appearances. Mr. Bullock filed an appearance in Delaware and Mr. Hill, as I recall, on behalf of Mr. Bullock in Nevada made an appearance.

Q All right. Have you ever seen any of the pleadings?

A I'm sure I have.

Q All right, sir. Then, if you've seen them, I assume you recall that the document filed on behalf of Mr. Bullock in Delaware was a plea of jurisdiction filed in a state and, of

course, this Court can and does take judicial [26] knowledge of the law of Delaware that it is a pure federal rule state and allows the filing of a plea of jurisdiction without there being a connotation of an appearance for general purposes. Are you aware of that?

A No. I did not attempt in my testimony to describe the legal effect of these appearances.

Q All right. That's what I was getting at. You know that papers were filed by the State of Texas in those two jurisdictions and that's all you're testifying to; is that correct?

A That's correct.

Q Are you familiar also with the fact, Mr. Lummis, that Mr. Bullock's office has worked along and within a cooperative mode with the Internal Revenue Service in the appraisal that's been ongoing on your estate?

A Yes, I am.

Q And that the Texas Comptroller has worked with the IRS since the inception of the IRS appraisal; is that not correct?

A Yes, early on.

Q And did the State of California enter into and work with the IRS in the same fashion in which the Texas Comptroller has?

A I'm not sure I can answer that question. Most of those communications have really gone through my term.

[27] Q All right, sir.

A I'm not personally familiar with the level of cooperation.

Q All right. When you speak of this one point, one or two point billion dollar assessment initially issued by the California inheritance tax referee, do you know whether or not that's been based upon an actual appraisal of the estate of Howard Hughes?

A I do not know.

Q All right, sir.

A But—

Q And you have testified that you yourself seriously disagree with this 1.2 billion dollar evaluation?

A I certainly do.

Q Mr. Lummis, is the nature of the estate that you administer wherever its assets are situated, tangible or intangible, are the assets in a sense of securities and so forth that are of aesthetic value or do you administer income producing properties?

A Well, these assets are certainly not aesthetic. They are—Some of the assets are passive, but their values certainly fluctuate and many of the assets involve operating companies and operating business lines within companies.

Q What is the last complete fiscal year in which the companies which make up your estate essentially have filed a federal income tax return?

[28] A The—I'm not sure about the income tax return. Whether or not—that may be 1977—

Q Where it's '77—

A Yes, sir. It may be '77. Now, if you're at—If your question relates to audited financial statements, that would be December, 1978.

Q Well, I believe that either you or one of your chief financial officers were quoted in the New York Times recently as stating that Summa Corporation had, or the estate, and please correct me as to which it is, had enjoyed some $37,000,000.00 before tax profit in its last fiscal year?

A Summa Corporation had before tax profit in 1978, $31,000,000.00.

Q All right, sir. And do you anticipate, of course, the vagaries of the Commerce being what it is that Summa will be a profitable entity in the future?

A We certainly hope so and we're doing our best to make it so and keep it so, but—We also recognize the vagaries of—

Q All right.

A —of the operations of these companies.

Q So, with the payouts provided by the various states and the federal government for these death taxes that are being asserted against your estate not only do you have [29] available to you the assets as per the whatever value is ultimately

assessed at the time of Mr. Hughes' death, but you will also have available to you the profits the company makes during these payout years to assist in making these tax payments; is that not correct?

A That is correct. And I don't want to be argumentative, but we will also have to bear the burden of losses that will be incurred by these companies since Mr. Hughes' death which might well be incurred in the future.

Q Right. Do you know of any method by which the heirs can reduce the tax burden upon the estate by effecting a transfer to a charitable institution? And I ask you that because I note that in the heir share agreement which either is or will shortly be introduced into the record today, I believe your mother has the power to effect a charitable transfer; is that not correct?

A Well, that's right. But I'm not going to express an opinion as to the effect the exercise of that power of appointment might have on the ultimate tax liability of this state.

Q All right, sir. Mr. Lummis, I would like to show you a document that's—I've just introduced as Exhibit T-5.

MR. HARRISON: May I approach the witness, your Honor?

THE COURT: Yes.

Q (By Mr. Harrison) And ask if you can identify that, sir?

[30] A This is a statement of claim and interpleader of Annette Gano Lummis and William R. Lummis, as Texas Administrators of the Hughes estate filed in the court of chancery of the State of Delaware, Newcastle County, Delaware in the interpleader action I previously referred to filed by Summa Corporation.

Q All right, sir. And with reference to this claim and interpleader filed by you and your mother in your capacity as Texas co-administrators, did you make any statement therein with regard to your contentions as to where Mr. Hughes' domicile of origin was?

A The—Neither of the Texas administrators made no assertion in this filing as to Mr. Hughes' domicile.

Q His domicile of origin, Mr. Lummis?

A Domicile of origin?

Q Yes, sir.

A No, unless I missed it.

Q Let me call your attention to numbered paragraph two, Mr. Lummis.

A Excuse me. I overlooked that. Yes. In this pleading, we acknowledged Mr. Hughes' domicile of origin was the State of Texas. He was born in Houston.

Q All right. And is it not correct that you testified in the Texas trial on domicile, the date of your testimony being on or about January the 4th of 1978, if you believe [31] me on the date, you did testify in the proceeding?

A Yes.

Q And in the course of your testimony, did you not testify that it was your opinion as an attorney and as an administrator that Mr. Hughes' domicile of origin was in Texas?

A No doubt about it.

Q All right, sir. He was born in Texas to parents domiciled in Texas?

A That's correct.

Q And one final question, Mr. Lummis, regarding this Delaware interpleader suit, the suit was initially brought by Summa Corporation against Mr. Bullock, Mr. Cory, all persons that Summa at the time knew might have some claim in the estate, seeking a for[u]m where domicile could be determined; is that not correct?

A That is correct.

Q And actually, it was brought in early May of 1976, within approximately a month after Mr. Hughes had died?

A Yes.

Q And is it not also correct that that suit was amended? The complaint by Summa was amended at a later time in September of 1977 and it dropped Mr. Cory and Mr. Alvord as defendants?

A I believe that's correct.

[32] Q All right, sir. So, if California is not a party to that case or has made no appearance in that case, it could in

part be due to the fact that plaintiff Summa Corporation has dropped California from the pleadings entirely?

A It's my recollection that they were dropped from the suit because they had made no appearance.

Q All right, sir.

MR. HARRISON: Pass the witness.

RECROSS EXAMINATION

QUESTIONS BY MR. MAYER:

MR. MAYER: Your Honor, as to the heir agreement we will shortly be introducing and offering a signed stipulation to the effect that the document may be introduced in evidence and for that reason, I have no further questions about that.

Q (By Mr. Mayer) Mr. Lummis, you testified on your direct, as I recall, that there are some intangible assets of the Hughes estate located in the State of Texas?

A Yes.

Q What are those assets?

A The principal assets are the stock, capital stock of Hughes Properties, Incorporated and 22 percent of the capital stock of Hughes Airwest. There are some other minor intangibles.

Q When you say those assets are located in the State of Texas, [33] do you mean merely that the stock certificates are in this State?

A Yes.

Q And where are they?

A They're in the custody of the Texas Commerce Bank under an agreement with the Texas Probate Court.

Q Is that in Houston?

A Yes, it is.

Q When you filed the Summa action in May 1976, I believe you just testified that you sought to name as defendants all persons who might have a claim against the Hughes estate?

A I did not file the Summa action. Summa filed it.

Q Well, is that what it basically sought to do?

A Well, yes. It sought to join those persons known at that time to have an interest in the estate. The thrust of the action, of course, was to get a court determination as to the stockholders of Summa Corporation pending a determination of the domicile of Mr. Hughes.

Q And one of the persons named as a defendant in that lawsuit was Defendant Cory, who is also a defendant in this one?

A I believe that's correct.

Q So, as of May 1976, the estate was aware, was it not, that Defendant Cory or the State of California might have a [34] claim against the Hughes estate?

A Yes.

MR. MAYER: Nothing further.

REDIRECT EXAMINATION

QUESTIONS BY MR. LILIENSTERN:

Q Mr. Lummis, you said that there are certain stock certificates in the hands of Texas Commerce Bank in Houston under an agreement with the court. What's the nature of that agreement?

A At the time of the appointment of my mother and me as temporary co-administrators of the Hughes estate, the Court set a bond for the administrators and also instructed as a part of that that an agreement be entered into between the Texas Commerce Bank and the Court, under which the physical custody of the Hughes estate assets located in Texas would be delivered to the Texas Commerce Bank and would be thereafter disbursed by the Texas Commerce Bank only upon order of the Texas Probate Court.

Q Is that referred to as a safekeeping agreement?

A Yes. That's what it is.

Q Do you have similar agreements in effect in other states in which estate property is located?

A Not formal agreements.

Q All right. Have you posted bonds in other states, you as administrator in other states in which you are an [35] administrator?

A Yes, I have.

Q Bonds in amounts set by the Probate Courts under whose jurisdiction you serve?

A Yes, in Delaware, Texas, and Nevada.

Q To your knowledge, was the judgment entered in Probate Court Number Two of the domicile of Mr. Hughes appealed by the Texas administrators?

A It was.

Q And is that appeal still pending?

A It is still pending, yes.

Q With respect to the nature of the assets of—I'm not sure if Mr. Harrison asked you about Summa Corporation or the estate; would you describe for the Court something about the nature of those assets of Summa Corporation?

A Summa Corporation has an interesting mix of assets. It has large amounts of unimproved real estate situated in California, Nevada and Arizona. Unimproved real estate, that is, investment realy [sic] estate, yields no income and bears a substantial carring [sic] cost. The company is also involved in various lines of operating business, including the hotel and casino business which is a substantial operation in Nevada and it's involved in the manufacture of helicopters at Culver City in California. It owns 78 percent of the stock of Hughes Airwest. It operates [36] a fixed base operation for general aviation in Las Vegas, Nevada. Those are the principal lines of business of the company.

Q Would you describe the assets of Summa, or well, of the estate as liquid or illiquid?

A Illiquid.

Q Illiquid?

A Yes.

Q What was the amount of federal estate taxes due and owing as reported by the estate on the federal estate tax return? I'm not sure I asked you that earlier. Do you have that figure?

A Yes. The—Let me refer to it to be specific about it. The net federal estate tax reported by the administrators as being due with respect to the Hughes estate and after taking

full 16 percent credit for state death taxes which might be incurred was $30,488,978.00.

Q Okay. Mr. Harrison was suggesting somewhat optimistically that the estate is ever increasing in value and that Summa is making profits and that given the payout which is permitted to pay all of the taxes due and owing, at least he was suggesting to me that there be sufficient assets to pay the, I believe you gave us the figure of $763,000,000.00. Do you have an opinion whether given the payout, the maximum payment permitted, the estate is going [37] to be able to pay an amount approaching that figure?

A In my opinion there would be no way for the Hughes estate to pay death taxes totaling $763,000,000.00.

Q Thank you, Mr. Lummis.

FURTHER RECROSS EXAMINATION

QUESTIONS BY MR. MAYER:

Q Just one additional question, Mr. Lummis.

THE COURT: Just one?

MR. MAYER: Just one.

THE COURT: All right.

Q (By Mr. Mayer) Do you have any power of attorney from your mother, Annette Gano Lummis?

A No, I do not.

FURTHER RECROSS EXAMINATION

QUESTIONS BY MR. HARRISON:

MR. HARRISON: Just one, your Honor.

Q (By Mr. Harrison) Mr. Lummis, with regard to the appeal of the Texas action wherein a verdict was rendered that Mr. Hughes' domicile of death was in Texas. Are you, through your capacity as Texas co-administrator an appellant in that action?

A Yes, sir.

Q All right. And you had testified that the appeal was pending. Is it not correct, Mr. Lummis, that after you sought and secured a temporary restraining order from this [38] Court last summer restraining the State of Texas from going

forward in its own courts, that you, through your attorneys, then went to the Court of Civil Appeals in Houston and secured and received a stay of that appeal pending the existence of Judge Roberts' temporary restraining order?

A I think that's the effect of the order entered by the Court of Civil Appeals.

Q Yes, sir. And so the fact that it's just pending and on stay is through machination that you have undertaken as a Texas administrator and as an appellant therein and as a plaintiff herein?

A That is correct.

MR. MAYER: Thank you. Your Honor, my purpose in speaking now is to address California's motion—

MR. LILIENSTERN: Excuse me. May Mr. Lummis be excused from the stand?

THE COURT: Yes. Stand aside, Mr. Lummis.

Filed July 10, 1979

In the United States District Court
for the Western District of Texas
Austin Division

[Title Omitted in Printing]

AFFIDAVIT OF BERT W. PLUYMEN IN SUPPORT OF MOTION FOR DISMISSAL

I, Bert W. Pluymen, being first duly sworn, depose and say:

1. I am a member of the State Bar of Texas and the Bar of this Court, and until September 1, 1978, was one of the attorneys for Defendants White and Bullock in the above entitled action. If called upon to do so, I could and would competently testify of my own personal knowledge to the facts set forth herein, except as otherwise indicated.

2. That during the period of July of 1976 until September 1, 1978, I was an Assistant Attorney General of Texas and was assigned to the representation of the State of Texas regarding the Estate of Howard R. Hughes, Jr.

3. On February 15, 1978, a jury in Probate Court No. 2 of Harris County, Texas, found that Howard R. Hughes, Jr., was domiciled in Texas at the time of his death on April 5, 1976. This verdict followed a trial of ten weeks which had commenced November 14, 1977.

4. Approximately twenty-five thousand documents were marked by the parties for possible introduction into evidence and 1,619 exhibits were actually introduced at the trial. Fifty-seven witnesses actually testified at the trial, plus sixteen testified by deposition.

5. Fifty-four oral depositions were taken preceding the trial. Assistant Attorneys General of Texas traveled to the states of New York, California, Utah, Nevada, Arizona, Maryland, Virginia, the District of Columbia, and the countries of Mexico and Canada taking depositions, interviewing witnesses and securing documents, all in preparation for the trial.

6. Over fifty thousand pages of documents were produced to the State of Texas in response to its motions to produce documents. These were indexed, summarized and organized for trial use.

7. The domicile case above referred to was on January 17, 1977, set for trial on September 12, 1977. On the motion of the estate, the trial date was on August 24, 1977, continued to November 14, 1977, and the trial did begin on that date.

DATED July 9, 1979.

/s/ Bert W. Pluymen

[Jurat Omitted in Printing]

Filed February 28, 1980

In the United States Court of Appeals
for the Fifth Circuit

[Title Omitted in Printing]

REQUEST FOR JUDICIAL NOTICE

Pursuant to Rule 201(d) of the Federal Rules of Evidence, Defendants Kenneth Cory, Controller of the State of California, and H. B. Alvord, County Treasurer of the County of Los Angeles (collectively referred to as "California"), hereby request the Court to take judicial notice of the documents submitted herewith as exhibits to this request. Exhibits A-1, A-2 and A-3 are three affidavits from the Reference Librarian of the Greeley Public Library in Greeley, Colorado, authenticating true and correct copies of certain pages from the 1977, 1978, and 1979 telephone directories for Greeley. Each of these pages contains the name of John Houstoun and shows an address in Windsor, Colorado. Attached hereto as Exhibit B is a duly certified certificate of registration signed by the Deputy County Clerk of Weld County, Colorado, which states that John McIntosh Houstoun resides and is registered to vote at 8962 Weld County Road 74, Windsor, Colorado. This address is the same as that listed in the 1978 and 1979 Greeley telephone directories. (The address in the 1977 directory is on the same road, but the number is different.) The certificate also states that Mr. Houstoun has been registered to vote in Windsor since October 1, 1976. Exhibit C attached hereto is a certified copy of Mr. Houstoun's registration affidavit, which shows that he has lived in Windsor since that date.

These materials are being submitted to this Court in order to establish conclusively a fact which no one contested below: that John McIntosh Houstoun, one of the twenty-two potential heirs of Howard Hughes whom California seeks to join in this action, resided in Windsor, Colorado on the date the complaint in this action was filed, July 14, 1978. Texas, having failed in the District Court to contest the adequacy of the showing made by California to support their claim that Mr. Houstoun then resided in Colorado, now contends in this Court that California's evidence on this point was insufficient to permit this action to be transferred to the District of Colorado. Texas Cross App. Br. at 28-30. We show in our Reply Brief filed concurrently herewith that this claim is meritless, but to erase any doubt on this score, this request has been made.

Under Rule 201(d) of the Federal Rules of Evidence, judicial notice is mandatory once a party formally requests it and provides the court sufficient information to enable it to determine that the materials submitted with the request are properly noticeable. Because duly certified official records and telephone directories are properly subject to judicial notice *(Massachusetts v. Westcott,* 431 U.S. 322 (1977) (public records); *McIntyre v. Michelin Tire Corp.,* 464 F. Supp. 1005 (D.S.C. 1978) (telephone directories)), notice of these materials is mandatory under Rule 201(d).[1]

This rule is as applicable to appellate courts as it is to trial courts. Rule 201(f), entitled "Time of Taking Notice," provides that "judicial notice may be taken at *any* stage of the proceeding." (Emphasis added). The Advisory Committee's note to this sub-

1. As to the propriety of taking judicial notice of telephone directories, *see also Sunrise Toyota, Ltd. v. Toyota Motor Co.,* 55 F.R.D. 519, 524-26 n.3 (S.D.N.Y. 1972) and *Harris v. Beech Aircraft Corp.,* 248 F. Supp. 599, 601 (E.D. Tenn. 1965).

section states, "[j]udicial notice may be taken at any stage of the proceedings, *whether in the trial court or on appeal.*" (Emphasis added). Rule 201(d), which states when judicial notice is mandatory, contains no words of limitation restricting its scope to the trial courts. Thus, Rules 201(d) and 201(f) lead inescapably to the conclusion that judicial notice is mandatory on appeal once properly requested. And this Court has recently held that judicial notice may be taken on appeal even though notice was not taken by the trial court. *Government of Canal Zone v. Burjan,* 596 F.2d 690, 694 (5th Cir. 1979).

In any event, in the circumstances of this case there can be no doubt as to the propriety of taking judicial notice. As noted, although Texas failed to contend in the District Court that the proof submitted by California as to Mr. Houstoun's Colorado residence was insufficient, it now seeks to raise this point in this Court. Had Texas timely raised this argument in the District Court, any deficiencies in the showing made by California could easily have been corrected. Now, having belatedly raised the point on appeal, Texas cannot complain if this Court takes judicial notice of materials directly responsive to its contention. To hold otherwise would permit Texas to profit from its failure to timely raise the argument it now advances.

Under Rule 201(b)(2) of the Federal Rules of Evidence, judicial notice may be taken of adjudicative facts "capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably be questioned." The documents submitted with this request are indeed "sources whose accuracy cannot reasonably be questioned" and thus fall within the parameters of the rule. The telephone directories show that Mr. Houstoun lived in Windsor, Colorado during 1977, 1978 and

1979 and the registration records show that he has been registered to vote there since October 1, 1976. Together, these documents make possible the "accurate and ready determination" of Mr. Houstoun's address on July 14, 1978; they therefore may be judicially noticed.

DATED: February 25, 1980.

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[Exhibits and Certificate of Service Omitted in Printing]

Filed December 19, 1980

In the United States Court of Appeals
for the Fifth Circuit

(Title Omitted in Printing)

MOTION FOR STAY OF MANDATE PENDING APPLICATION FOR CERTIORARI

Pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, Defendants, Appellees and Cross-Appellants Kenneth Cory and H. B. Alvord move for a stay of this Court's mandate, pending the filing by them of a timely petition for writ of certiorari in the United States Supreme Court and the Supreme Court's disposition thereof. The ground for this application is more fully set forth in the Affidavit of Steven L. Mayer in Support of Motion for Stay of Mandate submitted herewith.

Dated: December 18, 1980.

Respectfully,

JEROME B. FALK, JR.
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[Certificate of Service Omitted in Printing]

U.S. Court of Appeals
Filed Dec. 31, 1980

Gilbert F. Ganucheau, Clerk

In the United States Court of Appeals
For the Fifth Circuit

No. 79-2898

WILLIAM RICE LUMMIS,
Texas Temporary Administrator of the
Estate of Howard R. Hughes, Jr., Deceased,
Plaintiff-Appellant, Cross Appellee,

versus

MARK WHITE, BOB BULLOCK, KENNETH CORY,
H. B. ALVORD, ET AL.,
Defendants-Appellees,

KENNETH CORY, H. B. ALVORD,
Defendants-Appellees
Cross Appellants.

Appeals from the United States District Court for the
Western District of Texas

ORDER:

( ) The motion of ..... for stay of the issuance of the mandate pending petition for writ of certiorari is DENIED.

(✓) The motion of defendants-appellees/cross-appellants for stay of the issuance of the mandate pending petition for writ of certiorari is GRANTED to and including March 12, 1981, the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within the period above mentioned there shall be filed with the Clerk of this Court the certificate of the Clerk of the Supreme Court that the certiorari petition has been filed. The Clerk shall issue the mandate upon the filing of a copy of an order of the

Supreme Court denying the writ, or upon the expiration of the stay granted herein, unless the above mentioned certificate shall be filed with the Clerk of this Court within that time.

( ) The motion of ..... for a further stay of the issuance of the mandate is GRANTED to and including ....., under the same conditions as set forth in the preceding paragraph.

( ) IT IS ORDERED that the motion of ..... for a further stay of the issuance of the mandate is DENIED.

ROBERT A. VANCE
United States Circuit Judge